

TAB 7

NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
PH AUTOMOTIVE HOLDING CORPORATION
dba PACIFIC HONDA,

Protestant,

v.

AMERICAN HONDA MOTOR CO., INC.,

Respondent.

Protest No. PR-1945-05

In the Matter of the Protest of
TIPTON ENTERPRISES, INC., dba
TIPTON HONDA,

Protestant,

v.

AMERICAN HONDA MOTOR CO., INC.,

Respondent.

Protest No. PR-1947-05

In the Matter of the Protest of
BALL AUTOMOTIVE GROUP dba BALL
HONDA,

Protestant,

v.

AMERICAN HONDA MOTOR CO., INC.,

Respondent.

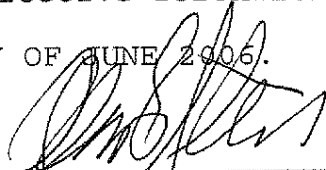
Protest No. PR-1948-05

DECISION

At its regularly scheduled meeting of June 16, 2006, the Public members of the Board met and considered the administrative record and Proposed Decision After Remand in the above-entitled matters. After such consideration, the Board adopted the Proposed Decision After Remand as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 16th DAY OF JUNE 2006.



GLENN E. STEVENS
Presiding Public Member
New Motor Vehicle Board

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8 STATE OF CALIFORNIA
 9 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of)
 12 PH AUTOMOTIVE HOLDING CORPORATION) Protest No. PR-1945-05
 dba PACIFIC HONDA,)

13 Protestant,) PROPOSED DECISION
 14 v.) AFTER REMAND
 15

16 AMERICAN HONDA MOTOR CO., INC.,)
 Respondent.)

17 In the Matter of the Protest of)
 18 TIPTON ENTERPRISES, INC., dba) Protest No. PR-1947-05
 TIPTON HONDA,)
 19 Protestant,)

20 v.)
 21 AMERICAN HONDA MOTOR CO., INC.,)
 Respondent.)
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1	In the Matter of the Protest of)	
2	BALL AUTOMOTIVE GROUP dba BALL)	Protest No. PR-1948-05
3	HONDA,)	
	Protestant,)	
4	v.)	
5	AMERICAN HONDA MOTOR CO., INC.,)	
6	Respondent.)	

PROCEDURAL BACKGROUND

1. By letters dated March 11, 2005, to PH Automotive Holding Corporation dba Pacific Honda, ("Pacific Honda"), Tipton Enterprises, Inc., dba Tipton Honda, ("Tipton Honda"), and Ball Automotive Group dba Ball Honda, ("Ball Honda"), and March 14, 2005, to Cush Automotive Group dba Cush Honda San Diego, ("Cush Honda"), Respondent American Honda Motor Co., Inc. ("AHM" or "Honda") gave notice pursuant to California Vehicle Code¹ section 3062 of its intention to establish a new Honda franchise at Costa Bella and Lemon Grove Avenue in Lemon Grove, California. All of the Protestants are located within 10 miles of the proposed location.

2. The New Motor Vehicle Board ("Board") received AHM's notice on March 17, 2005.

3. On March 24, 2005, timely protests were filed by Protestants Pacific Honda, protest number PR-1945-05; Cush Honda, protest number PR-1946-05; Tipton Honda, protest number PR-1947-05; and Ball Honda, protest number PR-1948-05.

4. Pursuant to stipulation by the parties the Board entered an order dated April 4, 2005 consolidating all of the above-named protests.

¹ All statutory references are to the California Vehicle Code, unless otherwise indicated.

1 5. Pursuant to Section 3066, a ten (10) day hearing was held
2 before Administrative Law Judge Marilyn Wong between September 19-23,
3 26-30, 2005 at the Board offices in Sacramento, California.

4 6. Protestants were represented by Michael J. Flanagan of the
5 Law Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite
6 450, Sacramento, California and Jonathan A. Michaels of Burkhalter,
7 Michaels, Kessler & George, 4 Park Plaza, Suite 850, Irvine,
8 California.

9 7. Respondent AMH was represented by Wallace M. Allan and Eric
10 Y. Kizirian of O'Melveny & Meyers LLP, 402 South Hope Street, Los
11 Angeles, California.

12 8. Upon submission of post-hearing briefs by the parties the
13 matter was deemed submitted on December 23, 2005.

14 9. On January 26, 2006, the Board met and considered the
15 Proposed Decision at its regularly scheduled meeting.

16 10. On February 1, 2006, the Board issued an Order Remanding the
17 Proposed Decision Dated January 23, 2006. The Order of Remand stated:

18 1. The ALJ shall consider the effect that the
19 establishment of a new Honda franchise in Lemon Grove will
20 have on the retail motor vehicle business and on the
21 consuming public's welfare within the relevant market area
22 (Veh. Code § 3063(b)), solely as it may relate to the
23 financial impact on Tipton Enterprises, Inc., dba Tipton
24 Honda ("Tipton Honda").

25 2. The ALJ shall consider whether the establishment
26 of the additional franchise in Lemon Grove would increase
27 competition and therefore be in the public interest (Veh.
28 Code § 3063(e)), or would the increased competition be

1 detrimental or ruinous to the financial welfare of Tipton
2 Honda.

3 3. In considering the above "good cause factors"
4 only, the ALJ may reopen the record to take additional
5 evidence and/or briefing from the parties.

6 4. The ALJ shall make these factual determinations
7 on the financial impact on Tipton Honda without
8 consideration of whether Tipton Honda could mitigate this
9 effect by changing the way it does business (see paragraphs
10 99-100 in Proposed Decision) in order to adapt to the new
11 established franchise.

12 11. On February 9, 2006, AHM filed a Motion to Dismiss Protest
13 of Cush Automotive Group, dba Cush Honda San Diego, and on February
14 17, 2006 Protestants' filed their opposition. On February 23, 2006,
15 AHM filed its Reply Brief in Support of AHMC's Motion to Dismiss
16 Protest of Cush Automotive Group, dba Cush Honda San Diego.

17 12. On February 23, 2006, a hearing on the motion was held
18 before Administrative Law Judge Anthony M. Skrocki. Additional briefs
19 by Protestants and Respondent were submitted on March 2, 2006 and
20 March 9, 2006 respectively. On March 13, 2006, Judge Skrocki resumed
21 the hearing on AHM's motion to dismiss the Cush protest.

22 13. Sometime prior to January 9, 2006 there was a "transfer"
23 (sale) of the Cush Automotive Group, which included Protestant Cush
24 Honda to the UnitedAuto Group (UAG). AHM contended that Cush Honda
25 should be dismissed as a Protestant in these proceedings and that
26 certain findings in the Proposed Decision relating to Cush Honda be
27 stricken.

28 14. The protest of Cush Automotive Group dba Cush Honda San

1 Diego, PR-1946-05, was dismissed.

2 15. The request of AHM to strike the findings relating
3 specifically to Cush Honda from the Proposed Decision prepared by
4 Administrative Law Judge Wong, dated January 23, 2006, was denied.
5 Judge Wong was instructed not to consider evidence concerning UAG's
6 acquisition of Cush Honda in the Remand Hearing.

7 16. On April 6, 2006, the Board issued its Decision adopting
8 Judge Skrocki's Proposed Order Granting Respondent's Motion to Dismiss
9 Protest of Cush Automotive Group, dba Cush Honda San Diego.

10 17. On March 27, 28, 29, 2006 and April 7, 2006 before
11 Administrative Law Judge Merilyn Wong at the Board offices in
12 Sacramento, California, a four (4) day hearing was held pursuant to
13 the Board's February 1, 2006, Order of Remand.

14 18. Protestants were represented by Michael J. Flanagan of the
15 Law Offices of Michael J. Flanagan and Jonathan A. Michaels of
16 Burkhalter, Michaels, Kessler & George LLP. Respondent AHM was
17 represented by Wallace M. Allan and Eric Y. Kizirian of O'Melveny &
18 Meyers.

19 19. The Remand Hearing was conducted with presentation of
20 evidence relating only to Tipton Honda as required by the Board's
21 Remand Order.

22 20. Protestant Tipton Honda presented the testimony of three
23 witnesses: Kathleen Stedham, business manager of Tipton Honda; Carl
24 Woodward, Certified Public Accountant of Woodward and Associates; and
25 Ernest H. Manuel, Jr., Ph.D., President of Fontana Group, Inc.

26 21. Respondent presented the testimony of two witnesses: James
27 A. Anderson, President of Urban Science Applications, a consulting
28 firm for auto manufacturers, and Charles Phillips a Certified Public

1 Accountant from Acuitas, Inc.

2 22. Upon submission of post-remand hearing briefs by the parties
3 the matter was deemed submitted on May 10, 2006.

4 ISSUES PRESENTED AT THE REMAND HEARING

5 23. The following issues were presented at the Remand Hearing:

6 1. What will be the effect of the establishment of a
7 new Honda franchise in Lemon Grove on the retail motor
8 vehicle business and on the consuming public's welfare
9 within the relevant market area, solely as it may relate to
10 the financial impact on Tipton Honda.

11 2. Whether the establishment of an additional
12 franchise in Lemon Grove would increase competition and
13 therefore be in the public interest, or would the increased
14 competition be detrimental or ruinous to the financial
15 welfare of Tipton Honda.

16 3. The determination of financial impact, if any,
17 upon Tipton Honda shall be made without considering whether
18 or not Tipton Honda could change its business practices and
19 thereby mitigate any losses.

20 24. The Proposed Decision After Remand shall rely on and
21 incorporate by reference the findings of facts in the Proposed
22 Decision of the original hearing dated January 23, 2006.

23 THE BURDEN OF PROOF ON REMAND

24 25. Section 3066(b) states: "The franchisee shall have the
25 burden of proof to establish that there is good cause not to enter
26 into a franchise establishing or relocating an additional motor
27 vehicle dealership."

28 26. In order to prevail in its protest Tipton Honda must show

1 that any negative financial impact upon it, caused by the proposed
2 Lemon Grove establishment, outweighs the benefits to the consuming
3 public from increased competition.

4 27. Stated another way, if the establishment of a Honda dealer
5 in Lemon Grove increases competition in the market place, will the
6 increased competition be detrimental or ruinous to the financial
7 welfare of Tipton Honda. According to the Remand Order these issues
8 must be decided without regard to whether Tipton Honda should or could
9 change its business practices in response to the increased
10 competition.

11 28. As part of its burden of proof Protestant Tipton Honda must
12 show that opportunities in the Lemon Grove Relevant Market Area² (RMA)
13 for new vehicles sales are insufficient to support the establishment
14 of an additional Honda dealer, without cannibalizing new vehicle sales
15 from Tipton Honda and thereby causing it to go out of business.

16 CONTENTIONS OF THE PARTIES³

17 29. At the original and remand hearings, AHM contends that the
18 Honda brand underperforms in the Lemon Grove RMA, and this is caused
19 by weak interbrand and intrabrand competition.

20 30. Interbrand competition is market competition among dealers
21 of other line-makes, e.g. Honda vs. Toyota or Ford. Intrabrand
22 competition is market competition among dealers of the same line-make.
23 The result of intrabrand competition is referred to as insell.

24
25 ² The "relevant market area" is an area within a radius of 10 miles from the site of a
26 potential new dealership. Section 507.

27 ³ The references to testimony, exhibits, or other parts of the record contained
28 herein are examples of the evidence relied upon to reach a finding, and are not
intended to be all-inclusive.

1 Honda's definition of insell is: "Identifies Honda registrations
2 within a market that were sold by dealers located outside the market
3 area. (Proposed Decision ("PD") Footnote 6 and 8)

4 31. AHM contends that new vehicle sales opportunities are
5 available in the Lemon Grove RMA through conquest sales and through
6 the reduction of insell in the RMA.

7 32. AHM further contends that there are more than adequate new
8 vehicle sales opportunities in the Lemon Grove RMA to support the
9 establishment of a new Honda dealer, without a reduction in new
10 vehicle sales of Tipton Honda or any other RMA dealer.

11 33. Tipton Honda contends that if Honda's performance standard
12 is met, it will exceed 100%, and therefore the Orange County standard
13 is unreasonably high.

14 34. Tipton Honda contends that it will experience a significant
15 loss of geographic territory with the addition of the Lemon Grove ASA⁴.
16 Tipton Honda further contends that its geographic loss will
17 necessarily translate into loss of new vehicle sales and service which
18 will be ruinous to Tipton Honda's business.

19 35. A Honda dealer's ASA is a group of census tracts nearest the
20 dealer where it enjoys a competitive advantage over all other Honda
21 dealers not in the ASA. This advantage is based on the location where
22 customers are closer and have better access to that dealer than to any
23 other dealer. (PD Paragraph 46)

24 36. AHM contends that the loss predictions by Tipton Honda's
25 expert are exaggerated and inflated, and based on incorrect
26 assumptions. If the underlying assumptions are corrected then Tipton
27

28 ⁴ An ASA stands for Areas of Statistical Analysis.

1 Honda will still remain profitable.

2 37. AHM contends that in the case of Tipton Honda there is no
3 correlation between increased sales and increased profitability or
4 conversely decreased sales and decreased profitability.

5 GENERAL FINDINGS OF FACT

6 38. The air distances between the proposed Lemon Grove add point
7 and the protesting dealers are as follows:

8	Cush Honda	4.8 miles
9	Tipton Honda	5.1 miles
10	Ball Honda	7.0 miles
11	Pacific Honda	9.1 miles

12 (2:27; Exh. 619, Tab 1, pp. 7-8)

13 39. The air distances between the proposed Lemon Grove add point
14 and other Honda dealers in the San Diego Metro are as follows:

15	Fuller Honda	10.5 miles
16	Poway Honda	14.5 miles
17	Cush (Escondido)	26.0 miles
18	Hoehn Honda	31.6 miles

19 (2:27; Exh. 619, Tab 2, pp. 7-8)

20 FINDINGS OF FACT AND ANALYSIS OF AVAILABLE NEW VEHICLE SALES
21 OPPORTUNITIES THROUGH INTERBRAND COMPETITION

22 40. Available new vehicle sales are best expressed by
23 calculating the difference between actual sales and potential sales.
24 At the original hearing, Honda new vehicle sales in the Lemon Grove
25 RMA were compared to sales in the Orange County metro. This was
26 called the Orange County metro standard. (PD Paragraph 86)

27 41. AHM found that the Honda brand significantly underperformed
28 in the Lemon Grove RMA when compared to the Orange County metro.

1 Honda also underperformed in both the larger San Diego metro and South
2 County areas. San Diego Metro and South County are areas in which
3 Tipton Honda and the proposed Lemon Grove dealer can expect to make
4 sales. (PD Paragraphs 64, 67)

5 42. According to AHM's expert, James Anderson, underperformance
6 is the result of weak interbrand competition caused by too few dealers
7 in the Honda dealer network. Having too few dealers in the RMA also
8 results in weak intrabrand competition and inadequate customer
9 convenience. Weak intrabrand competition among Honda dealers leads to
10 weak interband competition against Honda's competitors. (PD
11 Paragraphs 65, 78)

12 43. In order for Honda new vehicle sales performance in the
13 Lemon Grove RMA to perform at the same level as Orange County there
14 would have to be an additional 1,206 new Honda retail registrations.
15 In the San Diego metro an additional 1,837 new registrations would be
16 needed and South County would need an additional 977 registrations to
17 meet the Orange County standard. (PD Paragraph 64)

18 44. Bringing the Honda brand up to the Orange County metro
19 standard is achieved through "conquest sales," whereby Honda takes
20 sales from its competitors such as Toyota or Ford. (PD Paragraph 86)

21 45. It has been established that the Orange County standard is a
22 reasonable standard to measure the Honda brand performance in the
23 Lemon Grove RMA, because it is based on measurements of an adequately
24 performing area which is adjacent to the Lemon Grove study area. The
25 Orange County standard is only nominally higher than the California
26 standard. Honda penetration rates in 2004 for Orange County were
27 22.14% and 21.93% for California. (PD Paragraphs 49, 50, 51, 52 and
28 59)

1 46. At both hearings, Protestants' expert Dr. Ernest Manuel
2 unsuccessfully challenged the Orange County standard of measuring
3 Honda's performance. Dr. Manuel disagreed with the Orange County
4 standard as a benchmark because Orange County has higher household
5 incomes than the Lemon Grove RMA. He also believes that Lemon Grove
6 RMA consumers prefer domestic line-makes over foreign line-makes which
7 he calls a "domestic preference." (PD Paragraphs 53, 73; 14:41-43)

8 47. These arguments were discredited at the original hearing
9 through Mr. Anderson's testimony which demonstrated that Honda's
10 segmentation analysis accounts for both income differences and
11 domestic preferences. (PD Paragraphs 53, 72, 73, 74, and 75)

12 48. At both hearings Dr. Manuel also challenged the methodology
13 used by Mr. Anderson to calculate the sales opportunities available
14 through interbrand competition. At both hearings the experts took
15 completely different approaches to their calculations of registration
16 losses and thereby came to different conclusions about the numbers of
17 available opportunities for new vehicle sales. (PD Paragraph 90)

18 49. Although both methods were discussed at length in the
19 Proposed Decision at paragraphs 87 through 93, they are worth
20 reexamination here because of their significance in determining
21 available sales opportunities. Essentially, Mr. Anderson counts gross
22 registration losses while Dr. Manuel counts net registration losses.

23 50. To explain the differences between net and gross
24 registration losses, Mr. Anderson analogizes the situation to student
25 grades. High performing census tracts are analogous to A students;
26 census tracts performing slightly above the standard are B students;
27 census tracts that meet the standard are C students; and census tracts
28 with registrations losses are D or F students. (13:17-20)

51. In Mr. Anderson's analogy, suppose parents have 5 children: one an A student, another a B student, a third child a C student, a fourth a D student and the last one an F student. Averaging their grades together, results in a C grade. Using Dr. Manuel's gross registration loss model, all the children would be performing adequately in school. The failing D and F students would not be required to improve their grades. (13:17-20)

52. Using Mr. Anderson's gross registration loss model requires the underperforming D and F students to bring their grades up to a C or better. As applied to this hearing, additional Honda sales are required to bring all the underperforming census tracts up to the Orange County standard. The underperforming census tracts do not benefit from being averaged with the tracts that have sales in excess of the standard. (13:17-20)

53. Dr. Manuel counts registration losses in underperforming census tracts and offsets the losses with the gains in census tracts that exceed the Orange County standard and arrives at a figure of 927 net registration losses. Mr. Anderson counts only the losses in each census tract without an offset and arrives at the figure of 1,206 gross registrations losses. The difference between the two figures is 279 registration losses. (13:17-25; 11:176-77; Exh. 700, Tab 5, p. 5; Tab 3, p. 3)

54. Dr. Manuel testified that if all the census tracts that are below average came up to average, then the penetration rate for the Lemon Grove RMA would be 103.7% of the Orange County standard. Dr. Manuel believes that requiring the RMA dealer's to achieve more than 100% is an unreasonable sales expectation. (11:150-51)

55. Mr. Anderson testified that 100% of the Orange County

1 standard is a minimum standard of performance necessary for adequate
2 competition in the market place. He testified that performance in
3 excess of 100% is not unreasonable based on case studies. He cited
4 Rancho Santa Margarita Honda after an add point. In that case, Honda
5 penetration effectiveness went from 96% to 113.6% and then back down
6 to 111.8% from 2001 to 2002. There are also other areas in California
7 which exceed the Orange County standard, such as Stockton at 118% and
8 the San Francisco East Bay at 130%. (13:20-23; PD Paragraph 103)

9 56. Contrary to Mr. Anderson's opinion, Dr. Manuel's net
10 registration loss approach ignores the sales opportunity available in
11 underperforming census tracts and presupposes that the Orange County
12 performance standard is a ceiling on performance rather than a minimum
13 threshold of performance that should be achieved by Honda dealers in
14 the Lemon Grove RMA. (13:17-25)

15 57. Performance meeting the Orange County standard is the
16 minimum sales penetration rate to be achieved, not a ceiling limiting
17 the number of new vehicle sales that can be made. Therefore Mr.
18 Anderson's use of gross registration loss is both reasonable and
19 appropriate in calculating available opportunity of 1,206
20 registrations. (13:17-25)

21 FINDINGS OF FACT AND ANALYSIS OF AVAILABLE NEW VEHICLE SALES
22 OPPORTUNITIES THROUGH INTRABRAND COMPETITION

23 58. An additional source of available opportunity for new
24 vehicle sales occurs by reducing the amount of insell into the Lemon
25 Grove RMA. Mr. Anderson testified that insell is the result of weak
26 intrabrand competition. Insell occurs when a dealer of the same line-
27 make who is outside the RMA sells new vehicles into the RMA. (13:23-
28 26)

59. Mr. Anderson testified that insell is an appropriate source of available opportunity since it is an actual Honda new vehicle sale to a customer who chooses to purchase his or her Honda from a less convenient dealer. Surveys show that customers who buy from less convenient dealers are dissatisfied with either price, selection, selling approach or service offered by more convenient dealers. (13:5-8)

60. Mr. Anderson's insell figures which include the sales from two dealers who are located just outside the Lemon Grove RMA are correctly criticized by Dr. Manuel. He testified that the sales of Fuller Honda located only one-half mile outside the RMA and Poway Honda should be excluded from insell data because of their proximity to the RMA. Both Fuller Honda located to the south and Poway Honda located to the north enjoy a geographic advantage over the other RMA dealers to the extent that portions of their ASA's are within the RMA. (12:61-68; Exh. 700, Tab 3; 12:207-10; Exh. 1517, pp. A-29, A-30, A-31)

61. By excluding Fuller Honda and Poway Honda sales Mr. Anderson recalculated his insell figures which resulted in 1,435 units of insell, rather than the previous figure of 1,867 units of insell, which reduces his original insell figure by 432 units. (12:61-68; Exh. 700, Tab 3; 12:207-10; Exh. 1517, pp. A-29, A-30, A-31)

62. Both experts agree that it would be impossible to totally eliminate insell from the RMA. However Dr. Manuel is misguided in his attempt to arrive at a reasonable level of insell by using the Orange County standard to measure insell. The rate of insell in the Orange County metro is 25.6%. (11:180-94)

63. Dr. Manuel incorrectly reasons since the Orange County

1 standard has been proven as a reasonable measure of interbrand
2 competition, ergo it must be a reasonable measure of intrabrand
3 competition. The fallacy of Dr. Manuel's use of the Orange County
4 standard lies in the fact that the Orange County standard was not
5 constructed to measure performance of Honda dealers within the RMA
6 against Honda dealers outside the RMA, but was constructed to measure
7 Honda's brand performance against competing brands. Dr. Manuel
8 offered no rational reason to adopt the Orange County standard as a
9 measure of insell. (11:180-94; Exh. 700, Tab 4)

10 64. Next Dr. Manuel attempts to average the insell of selected
11 dealerships based on case studies. He sets up arbitrary parameters
12 which exclude dealerships that would negatively impact the conclusions
13 he attempts to achieve. Dr. Manuel fails to present evidence to show
14 that it is reasonable to average insell rates in case study markets in
15 order to determine an acceptable level of insell. (13:24-25; 12:216-
16 19; 11:186-94)

17 65. Mr. Anderson admitted that even with the establishment of
18 the Lemon Grove add point he would not expect 100% of insell to
19 disappear. Mr. Anderson testified that in well-represented markets
20 one could expect 5% insell levels. However, when insell rates
21 approach 10%, a market assessment might be warranted. (13:10)

22 66. An appropriate level of insell need not be determined at
23 this hearing, as paragraph 77 indicates there are excess sales
24 opportunities available when projected Lemon Grove sales are
25 subtracted from the total sales opportunities.

26 67. Mr. Anderson testified that insell rates are derived from
27 the presence or lack of presence of intrabrand competition. As
28 dealers of the same line-make compete more effectively against each

1 other, the same dealers become more effective competitors against
2 other brands such as Toyota and Ford. (13:24)

3 68. When a new dealer goes into business, that dealer stimulates
4 intrabrand competition which then creates greater interbrand
5 competition. As a result of this competition, registration losses and
6 insell decline. (13:24)

7 69. Mr. Anderson's adjusted insell figure of 1,435 is a
8 reasonable measure of available opportunity, despite the fact that
9 100% of insell would not be eliminated in the RMA by the proposed add
10 point.

11 FINDINGS OF FACT FOR THE TOTAL AVAILABLE NEW VEHICLE SALES
12 OPPORTUNITIES IN THE LEMON GROVE RMA

13 70. Total available new vehicle sales opportunities are
14 expressed as the sum of registration losses from interbrand or
15 conquest sales and intrabrand competition or reduced insell. Gross
16 registration losses are those registrations made by Honda's
17 competitors which are the result of interbrand competition. Insell is
18 lost opportunity because consumer studies show that consumers do not
19 purchase from the most convenient dealer selling that same line-make
20 because of price, selection, service or sales approach. (PD Paragraph
21 86)

22 71. In the Lemon Grove RMA, Mr. Anderson calculates a total of
23 2,641 available sales opportunities by adding gross registration
24 losses of 1,206 plus 1,435 adjusted insell losses. (Exh. 1517, p. A-
25 30)

26 72. Using Dr. Manuel's net registration losses the total is
27 2,362 units. It includes net registration losses of 927 units plus
28 adjusted insell losses of 1,435 units. (Exh. 1517, p. A-31)

73. The following are impact assessment summaries of the proposed Lemon Grove establishment on available sales opportunity if the new dealer performs like the average RMA dealer with 1,655 new vehicle sales, or if the new dealer performs like the strongest RMA dealer with 2,068 new vehicle sales. (Exh. 1517, pp. A-30, A-31)

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74. Chart I Using Gross Registration Losses:

IMPACT ASSESSMENT SUMMARY LEMON GROVE RMA DECEMBER 2004 YTD		
	AVERAGE LEMON GROVE RMA DEALER PENETRATION PROFILE	PACIFIC HONDA PENETRATION PROFILE
PROJECTED REGISTRATIONS OF THE PROPOSED LEMON GROVE DEALER IN THE LEMON GROVE RMA	1,655	2,068
LOST OPPORTUNITY IN THE LEMON GROVE RMA GROSS REGISTRATION LOSS AT EXPECTED* AVERAGE	1,206	1,206
INSELL**	1,435	1,435
TOTAL LOST OPPORTUNITY IN THE LEMON GROVE RMA	2,641	2,641
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING EXPECTED* AVERAGE	62.7%	78.3%

*Orange County Metro Average Adjusted For Census Tract Segment Popularity
 **Excludes Fuller Honda sales in portion of Chula Vista ASA in RMA and Poway
 Honda sales in portion of Poway ASA in RMA
 (Exh. 1517, p. A-30)

75. Chart II Using Net Registration Losses:

IMPACT ASSESSMENT SUMMARY LEMON GROVE RMA DECEMBER 2004 YTD USING NET REGISTRATION LOSS		
	AVERAGE LEMON GROVE RMA DEALER PENETRATION PROFILE	PACIFIC HONDA PENETRATION PROFILE
PROJECTED REGISTRATIONS OF THE PROPOSED LEMON GROVE DEALER IN THE LEMON GROVE RMA	1,655	2,068
LOST OPPORTUNITY IN THE LEMON GROVE RMA NET REGISTRATION LOSS AT EXPECTED* AVERAGE	927	927
INSELL**	1,435	1,435
TOTAL LOST OPPORTUNITY IN THE LEMON GROVE RMA	2,362	2,362
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING EXPECTED* AVERAGE	70.1%	87.6%

*Orange County Metro Average Adjusted For Census Tract Segment Popularity

**Excludes Fuller Honda sales in portion of Chula Vista ASA in RMA and Poway Honda sales in portion of Poway ASA in RMA (Exh. 1517, p. A-31)

76. If the proposed Lemon Grove dealer achieves the degree of sales effectiveness of the average RMA dealer, it can expect to sell 1,655 new vehicles. If Lemon Grove performs as effectively as the strongest dealer, it can expect to sell 2,068 new vehicles. In either case, there is still ample sales opportunity in the RMA after subtracting the projected sales by the Lemon Grove dealer without taking any sales away from Tipton Honda or any other RMA dealer. (13:29-36)

77. The most conservative figure for available sales opportunity is 2,362 which uses Dr. Manuel's net registration loss of 927 plus an insell figure of 1,435, which excludes Fuller Honda and Poway Hondas' insell. The available sales opportunity figure of 2,362 subtracting the most competitive sales projection of 2,068 still leaves close to 300 units of insell and registration losses available. In this case the proposed new dealer captures 87% of the available sales opportunity. (13:27-36)

78. If gross registration loss figures are used, the total available sales opportunity is 2,641 units, subtracting the most competitive sales projection of 2,068 leaves nearly 600 units available. In this case the proposed new dealer captures 78% of the available sales opportunity. (13:27-36)

79. Future market growth is an additional source of new vehicle sales in the Lemon Grove RMA. It was established that between 1990 and 2004, the RMA experienced moderate but steady population and household growth. This trend is expected to continue through 2009.

1 (PD Paragraphs 69, 109)

2 80. If the Lemon Grove establishment is permitted the dealership
3 would not be constructed or begin operations until 2008, during this
4 time the Lemon Grove RMA will have continued to experience growth.

5 (PD Paragraphs 69, 115, 116)

6 81. There are sufficient lost opportunities from inter- and
7 intra- brand competition to allow the establishment of the Lemon Grove
8 franchise without taking sales away from Tipton Honda. Factoring
9 growth in the RMA from 2004 through 2008, the first year in which the
10 Lemon Grove dealer could be operative, is further insurance against
11 loss of sales by Tipton Honda.

12 **FINDINGS OF FACT AND ANALYSIS OF FINANCIAL IMPACT ON TIPTON HONDA**

13 82. At the original hearing, Dr. Manuel constructed ASAs to
14 evaluate the percent loss to Tipton Honda resulting from the Lemon
15 Grove add point. His ASA models based on "closer in drive time,"
16 "based on drive time," and "closer in air distance" produced loss
17 percentages ranging from a high of 62.5% to a low of 14.5%. (Exh.
18 1517, p. A-01)

19 83. At the remand hearing, Mr. Anderson methodically dissected
20 out the flaws in Dr. Manuel's ASAs. Mr. Anderson testified that the
21 "closer in drive time" model was flawed because many of Tipton Honda
22 customers who would be closer to the Lemon Grove dealer are already
23 closer to some other Honda dealer, and therefore their purchase
24 decisions were not based on proximity to the dealership. The only
25 Tipton Honda customers who are at risk because of the proposed Lemon
26 Grove establishment are those customers in the Lemon Grove ASA who
27 were formerly in the Tipton Honda ASA. (12:158-65; Exh. 1517, p. A-
28 02A)

1 84. Customers who are already closer to one or more Honda
2 dealers would remain closer to those Honda dealers with or without the
3 Lemon Grove add point. Therefore Tipton Honda did not enjoy a
4 geographic advantage over those customers. If geographic proximity
5 was the most significant sales factor, customers would never have
6 purchased a new vehicle from Tipton Honda in the first place. (12:159)

7 85. Therefore the "closer in drive time" distance is
8 fundamentally flawed and incorrect. By eliminating the percentage
9 loss based on "closer in drive time," the loss estimates by Dr. Manuel
10 are reduced in range from a high of 47.5% to a low of 14.5%. (12:159-
11 65)

12 86. The "based on drive time" ASA created by Dr. Manuel is
13 inaccurate because it incorrectly assigns eight (8) census tracts to
14 the Lemon Grove dealer which unrealistically reduces Tipton Honda's
15 ASA. Mr. Anderson utilized software programs and recorded actual
16 drive times to show that the eight (8) census tracts are improperly
17 assigned to Lemon Grove and should remain part of Tipton Honda's ASA.
18 (12:160-65; 194-97; 14:104-07; Exh. 1517, pp. A-12 - A-17)

19 87. Mr. Anderson also disagrees with Dr. Manuel's calculations
20 that record only losses in Tipton Honda's primary geographic advantage
21 area but ignores gains in its secondary geographic advantage area.
22 This incorrect calculation distorts the potential impact on Tipton
23 Honda. (12:161-62; Exh. 1157, p. A-02A)

24 88. In addition, Dr. Manuel's impact models are flawed because
25 they are not based on Tipton Honda's actual new and used car sales, or
26 units in operation (UIOs). Dr. Manuel merely looked at the change in
27 the geographic advantage areas of Honda expected registrations,
28 competitive registrations, households, and units in operation. He did

not examine the change in Tipton Honda's actual new and used car sales, or UIOs. (12:162-65)

89. While it could be useful for other purposes to show a reduction in households in Tipton Honda's ASA, if the households that formed the reduction did not buy Hondas or any other new cars, then those households would be irrelevant to any impact analysis on Tipton Honda. (12:162-65)

90. The same is true for Honda registrations. If Tipton Honda did not make any sales in the changed geographic area, then the lack of sales should not have any impact on Tipton Honda. (12:162-63)

91. While Mr. Anderson believes that there will not be any financial impact on Tipton Honda, he has nevertheless corrected Dr. Manuel's data and has developed the following chart to illustrate impact. (12:166-69)

Manuel Estimated Impact Percentages Based on Actual Tipton Customers - Models 1-6 (No Competitive Response)

	Tipton's New Retail Honda		
	Primary	Secondary	Total*
Manuel Drive Time ASA	-19.2	+10.2	-14.1
Manuel Revised Drive Time ASA	-12.5	+3.5	-10.8
Urban Science ASA	-9.6	+3.8	-7.7
2004-2008 Growth Urban Science ASA			+20.55**
	Tipton's Used Honda		
	Primary	Secondary	Total*
Manuel Drive Time ASA	-13.3	+3.4	-11.6
Manuel Revised Drive Time ASA	-10.1	+0.2	-10.0
Urban Science ASA	-9.1	+3.0	-7.6
2004-2008 Growth Urban Science ASA			
	Tipton's Parts & Service (Active UIOs)		
	Primary	Secondary	Total*
Manuel Drive Time ASA	-23.1	+11.2	-17.5
Manuel Revised Drive Time ASA	-15.2	+3.3	-13.5
Urban Science ASA	-12.1	+4.6	-9.8
2004-2008 Growth Urban Science ASA			+43.2***

* Primary +50% of Secondary

** Honda expected registrations increase 375 units or 20.5%

*** Honda active UIOs increase 2,533 plus 417 new UIOs or 43.2% (Exh. 1517, p. A-02A)

92. If Tipton Honda maintains its current business practices and does not respond to the increased competition from the proposed Lemon Grove dealer the projected loss in new Honda retail sales under the three scenarios would be as follows:

"Manuel Drive Time ASA"	14.1% loss;
"Manuel Revised Drive Time ASA"	10.8% loss;
"Urban Science ASA"	7.7% loss.

(12:166-70; Exh. 1517, p. A-02A)

93. Tipton Honda's projected loss in used car sales under the three scenarios are as follows:

"Manuel Drive Time ASA"	11.6% loss;
"Manuel Revised Drive Time ASA"	10.0% loss;
"Urban Science ASA"	7.6% loss.

(12:166-70; Exh. 1517, p. A-02A)

94. Tipton Honda's projected loss in parts and service business based on active UIOs under the three scenarios are:

"Manuel Drive Time ASA"	17.5% loss;
"Manuel Revised Drive Time ASA"	13.5% loss;
"Urban Science ASA"	9.8% loss.

(12:166-70; Exh. 1517, p. A-02A)

95. All of the above-figures are significantly lower than the inflated loss projections of 20%-62% made by Dr. Manuel. (Exh. 1517, p. A-01)

96. The projected impact of loss of new vehicle sales with corrections would range from 7.7% to 14.1%. The projected impact of loss on Tipton Honda used vehicle sales would range from 7.6% to 11.6%. The projected impact of loss on parts and service by the active units in operation count would range from 9.8% to 17.5%. (Exh.

1 1517, p. A-02A)

2 97. Mr. Anderson testified that any new vehicle sales losses by
3 Tipton Honda would be offset by future growth in the market place.
4 Based on registration data from 1995 to 2004, Mr. Anderson projected a
5 20.5% increase in expected Honda registrations from 2004-2008.
6 (12:172-77; Ex 1517, pp. A-02A, A-18)

7 98. Of the three models, Urban Science's ASA is the most
8 accurately designed ASA for loss projections because it is based on
9 distance and consumer behavior. The Urban Science ASA is constructed
10 by using several factors, including air distance to the next closest
11 Honda dealer, traffic and shopping patterns, geographical barriers,
12 and road networks. (PD Paragraph 46) Dr. Manuel's models are single
13 dimensional based only on drive times and thus less reliable and
14 dependent on road and traffic conditions. The Urban Science ASA
15 projects a 7.7% new vehicle sales loss. (12:159; 170-71; Exh. 1517, p.
16 A02A)

17 99. The above chart in Paragraph 91 also shows that UIOs are
18 projected to grow 43.2% by 2008. This number far exceeds the high
19 projections of a 17.5% decrease in active UIOs Honda as a growing
20 brand means increases in UIOs. Once a vehicle comes into the UIO
21 market, it remains a UIO for at least 10 years. More Hondas are added
22 to the UIO market than are dropped off the market which makes for
23 cumulative growth in UIOs. (12:178-82) (12:172-77; Exh. 1517, pp. A-
24 02A, A-18A)

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100. The following charts offer comparisons for potential impact based on Mr. Anderson's corrections of Dr. Manuel's models and Urban Science's model.

Manuel Profitability Analysis - Tipton Honda - With Corrections
Manuel Drive Time ASA
 Illustrative Year Based on 2004

	Total Sales	Loss Percent	Amount Lost	Contribution Per Unit	Lost Net Profit (Before Bonus & Tax)
New Honda Retail Vehicle Department	1785*	14.1%	252	\$1,220	\$307,440
Used Honda Retail Vehicle Department	358*	11.6%	42	\$1,375	\$ 57,750
Service Department	\$2,401,030	17.5%	\$420,180	\$ 470**	\$197,485
Parts & Accessories Department	\$3,692,097	17.5%	\$646,117	\$ 223**	\$144,084
					\$706,759

* Sales show in units

** Profit contribution per \$1,000 of sales
 (Exh. 1517, p. A-03A)

Manuel Profitability Analysis - Tipton Honda - With Corrections
Manuel Drive Time Revised ASA
 Illustrative Year Based on 2004

	Total Sales	Loss Percent	Amount Lost	Contribution Per Unit	Lost Net Profit (Before Bonus & Tax)
New Honda Retail Vehicle Department	1785*	10.8%	193	\$1,220	\$235,460
Used Honda Retail Vehicle Department	358*	10.0%	36	\$1,375	\$ 49,500
Service Department	\$2,401,030	13.5%	\$324,139	\$ 470**	\$152,345
Parts & Accessories Department	\$3,692,097	13.5%	\$498,433	\$ 223**	\$111,151
					\$548,456

* Sales show in units

** Profit contribution per \$1,000 of sales
 (Exh. 1517, p. A-05B)

Manuel Profitability Analysis - Tipton Honda - With Corrections
Urban Science ASA
Illustrative Year Based on 2004

	Total Sales	Loss Percent	Amount Lost	Contribution Per Unit	Lost Net Profit (Before Bonus & Tax)
New Honda Retail Vehicle Department	1785*	7.7%	137	\$1,220	\$167,140
Used Honda Retail Vehicle Department	358*	7.6%	27	\$1,375	\$ 37,125
Service Department	\$2,401,030	9.8%	\$235,301	\$ 470**	\$110,591
Parts & Accessories Department	\$3,692,097	9.8%	\$361,826	\$ 223**	\$ 80,687
					\$395,544

* Sales show in units

** Profit contribution per \$1,000 of sales
(Exh. 1517, p. A-07A)

101. Tipton Honda's projected lost net profit before taxes and bonus under the three models are:

Manuel Drive Time ASA	\$706,759
Manuel Revised Drive Time	\$538,456
Urban Science ASA	\$395,544

102. In 2004 Tipton Honda had a net profit before bonus and tax of \$1,328,709. An "after bonus" figure was not used in Mr. Anderson's calculations because the bonuses are equivalent to dividends or distributions of profits from the business and is unrelated to the financial stability of the business. (13:146-47) Kathleen Stedham, Tipton Honda's business manager, testified that bonuses to herself, Mr. Peterson and the owner Harold B. Tipton were based on percentages of each months profits. (11:39)

103. Mr. Anderson developed the following charts after correcting Dr. Manuel's profitability analysis:

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Manuel Profitability Analysis - Tipton Honda - With Corrections
Manuel Drive Time ASA
 Illustrative Year Based on 2004

Profitability Before Add Point

Net Profit (Before Bonus & Tax)	\$1,328,709
Dealership Net Worth	\$4,097,737
Return on Net Worth (Before Bonus & Tax)	32.4%
U.S. Average Dealership Return on Net Worth (Exh. 1517, A-04A)	24.3%

Profitability After Add Point

Net Profit (Before Bonus & Tax) Before Add Point	\$1,328,709
Less Impact of Add Point	\$ 706,759
Net Profit (Before Bonus & Tax)	\$ 621,950
Dealership Net Worth Before Add Point	\$4,097,737
Less Impact of Add Point	\$ 706,759
Dealership Net Worth	\$3,390,978
Return on Net Worth (Before Bonus & Tax) (Exh. 1517, p. A-04A)	18.3%

Manuel Profitability Analysis - Tipton Honda - With Corrections
Manuel Drive Time Revised ASA
 Illustrative Year Based on 2004

Profitability After Add Point

Net Profit (Before Bonus & Tax) Before Add Point	\$1,328,709
Less Impact of Add Point	\$ 548,456
Net Profit (Before Bonus & Tax)	\$ 780,253
Dealership Net Worth Before Add Point	\$4,097,737
Less Impact of Add Point	\$ 548,456
Dealership Net Worth	\$3,549,281
Return on Net Worth (Before Bonus & Tax) (Exh. 1517, p. A-06B)	22.0%

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Manuel Profitability Analysis - Tipton Honda - With Corrections
 Urban Science ASA
 Illustrative Year Based on 2004

Profitability After Add Point

Net Profit (Before Bonus & Tax) Before Add Point	\$1,328,709
Less Impact of Add Point	\$ 395,544
Net Profit (Before Bonus & Tax)	\$ 933,165
Dealership Net Worth Before Add Point	\$4,097,737
Less Impact of Add Point	\$ 395,544
Dealership Net Worth	\$3,702,193
Return on Net Worth (Before Bonus & Tax)	25.2%
(Exh. 1517, p. A-08A)	

104. Dr. Manuel's corrected models show that Tipton Honda could show decreased profits ranging from \$400,000 to \$700,000. Based on 2004 data, even if Tipton Honda were to experience losses of this magnitude it would still be profitable, albeit not as profitable as before.

105. Tipton Honda's 2004 net profits before bonus and tax was \$1,328,709. If the highest impact of \$706,759 were to occur, Tipton Honda would still have net profits before bonus and tax of \$621,950.

106. By 2008, and accounting for growth in the market place, Tipton Honda could gain net profits before bonus and tax of approximately \$500,000. Adding \$520,834 to 2004 net profits of \$1,328,709 would result in net profits of \$1,849,543 in 2008. (12:185-87)

107. Tipton Honda's expert Carl Woodward testified that according to the National Automobile Dealers Association (NADA), the profit margins for the average dealer in the United States was 1.7% in 2004 and 1.6% in 2005. The profit margins for Tipton Honda were 1.8% in 2004 and 1.5% in 2005. Profit margins are determined by taking net

1 profits and dividing it by total sales. A secondary method of
2 determining dealer profitability is to look at what net profit
3 represents as a return on investment. (11:90, 95, 97)

4 108. If the Lemon Grove dealership had gone into business in
5 2004, Tipton Honda could have had a 4.8% loss in new vehicle sales or
6 a net loss of 87 units. However, through projected market growth by
7 2008, Tipton Honda would experience a gain of 5.7% or a net gain of
8 102 units. This would be the case if Tipton Honda does nothing to
9 respond to the enhanced competition of another dealer in the network.
10 (12:187-88; 13:32-34)

11 109. Dr. Manuel through regression analysis attempts to correlate
12 the reduction in new vehicle sales, used vehicle sales, or parts and
13 service sales with a necessary reduction in profits. In Dr. Manuel's
14 regression analysis with respect to new vehicle sales, only 20% of the
15 variation in Tipton Honda's new vehicle department profit is explained
16 by increases or decreases in new vehicle sales. The remaining 80%
17 variations in profits are due to other factors. (12:75-76; Exh. 700,
18 Tab 6)

19 110. AHM's expert Charles Phillips analyzed Tipton Honda's
20 financial statements from 2000-2004 and found that in 3 out of 4
21 years, the profitability of new vehicle sales moved in the opposite
22 direction. In those years when new vehicle sales went up, profit went
23 down and vice versa. This also occurred in used vehicle sales, and
24 parts and service. Therefore Dr. Manuel's conclusion that a decrease
25 in sales inevitably leads to a decrease in profit is erroneous.
26 (13:171-74; Exh. 1518)

27 111. Dr. Manuel presented 13 selected case studies involving
28 Honda add points. According to Dr. Manuel the percentage of change

1 before and after the add points "adjusted for at bats" in all cases
2 the dealers with one exception, experienced losses ranging from 5.3%
3 to 39.3%. Despite the losses Dr. Manuel stated that he did not know
4 of any of the dealers going out of business, with the exception of
5 Honda of Slidell which ceased business because of Katrina. In fact
6 Dr. Manuel admitted that he did not know of any instance where a Honda
7 dealer was forced out of business because of an add point. (12:34-37;
8 98)

9 112. Dr. Manuel's 13 selected case studies are misleading to the
10 extent that they exclude the remaining dealers totaling 56 who have
11 been affected by add points. The exhibit showing all add points is
12 attached hereto as Exhibit A, which shows the percent of dealer sales
13 before and after Honda add points. The chart also shows that on
14 average the 56 dealers showed a net gain of 10.7% after an add point
15 went in. Nearly 65% or 36 out of 56 dealers enjoyed gains after the
16 add point and only 7% of the dealers or 4 dealers sustained the
17 largest losses of 15%-20%. (Exh. 715, Tab 14; 13:52-53)

18 FINDINGS OF FACT AS TO WHETHER INCREASED COMPETITION
19 WILL BE DETRIMENTAL OR RUINOUS TO TIPTON

20 113. The Oxford English Dictionary defines "ruinous" as bringing
21 or tending to bring ruin; disastrous, destructive, pernicious and
22 defines "detrimental" as causing loss or damage; harmful, injurious,
23 hurtful.

24 114. It can be argued that detrimental and ruinous are ends of a
25 spectrum, with detrimental meaning to cause any harm however small at
26 one end of the spectrum and ruinous meaning the closure of the
27 business.

28 115. Any harm to Tipton Honda must be weighed against the loss of

benefit to the consuming public. If a new franchise was established, the public would certainly benefit from the increased competition. The customers would also benefit from the added convenience of an additional dealer. However, it would not be in the public interest if Tipton Honda sustained losses so great that it would be forced out of business. If Tipton Honda were to go out of business, there would be no benefit to the consuming public because the level of competition would remain the same with Tipton being replaced by Lemon Grove.

116. If Tipton Honda were to go out of business the public interest would not be served as employees would lose their jobs, the city would lose a tax generating business, and the Tipton family would lose its business of 30 years.

117. It is therefore with great care and deliberation that the facts are examined to determine the likelihood that Tipton Honda will lose significant business or be forced out of business because of the Lemon Grove establishment. There are several important reasons why it is both highly unlikely and highly improbable that Tipton Honda will lose significant business or go out of business because of the Lemon Grove establishment.

1. AHM has demonstrated that there is sufficient business to be transacted in the Lemon Grove Relevant Market Area to support the opening of a new franchise without taking any business away from Tipton Honda.

2. Under the stewardship of general manager Mike Peterson, Tipton has been profitable for the past 10 years. In 2004, Tipton Honda showed a pre-tax net profit before bonus of \$1,328,709. In 2005 Tipton Honda is expected to sell between 1,800 and 1,900 new vehicles and between 700 and 800 used

1 vehicles. There is no indication that Tipton Honda's strong
2 sales and profitability will not continue in the future.

3 3. Tipton Honda has developed a strong and loyal customer
4 base over the past 30 years which is a distinct advantage over a
5 new market place competitor.

6 4. The Lemon Grove Relevant Market Area has experienced
7 and will continue to experience moderate and steady population
8 and household growth in the future.

9 5. The earliest the Lemon Grove dealership could open
10 would be sometime in 2008. By this time Honda expects growth in
11 new vehicle sales which would offset any losses predicated on
12 2004 figures.

13 6. The Honda brand is continuing to grow and it has not
14 been shown that any Honda dealer has gone out of business as a
15 result of the establishment of a new Honda franchise.

16 DETERMINATION OF ISSUES

17 The determination of issues in the Proposed Decision dated
18 January 23, 2006 is incorporated by reference.

19 A. Respondent AHM has affirmatively proven that there is
20 sufficient business to be transacted in the Lemon Grove RMA to support
21 the establishment of a Honda franchise in Lemon Grove.

22 B. AHM has affirmatively proven that the proposed establishment
23 of a dealership in the Lemon Grove Relevant Market Area is unlikely to
24 cause Tipton Honda to have negative profitability in its business.

25 C. AHM has affirmatively proven that it is unlikely that the
26 establishment of an additional franchise will be ruinous to the
27 financial welfare of Tipton Honda.

28 D. AHM has affirmatively proven that the unlikely negative

1 impact to Tipton Honda's business in the form of reduced profits would
2 be offset by the increased competition and customer convenience and
3 would therefore be in the public interest. (Section 3063(b) and (e))

4 E. AHM has proven the above determinations A through D are made
5 without consideration as to whether Tipton Honda could mitigate any
6 impact by changing any of its current business practices.

7 F. Protestant Tipton Honda has failed to meet its burden of
8 proof to show that the establishment of an additional franchise in
9 Lemon Grove would likely cause significant loss of business or would
10 likely be ruinous to its financial welfare.

11 G. Tipton Honda has failed to show that any detriment it might
12 suffer would outweigh the benefit of increased competition and
13 customer convenience to the consuming public.

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PROPOSED DECISION

The Protests are overruled. Respondent American Honda Motor Co., Inc. shall be permitted to establish an additional Honda dealership at the proposed site at Costa Bella and Lemon Grove Avenue, Lemon Grove, California.

I hereby submit the foregoing which constitutes my Proposed Decision After Remand in the above-entitled matter, as the result of a hearing before me, and I recommend this Proposed Decision After Remand be adopted as the decision of the New Motor Vehicle Board.

DATED: June 6, 2006

By: _____

Merilyn Wong

MERILYN WONG
Administrative Law Judge

George Valverde, Director, DMV
Mary Garcia, Branch Chief,
Occupational Licensing, DMV

Dealers Adjacent to Add Points

Dealer	Distance	Dealer Sales* Before	Dealer Sales* After	% Change	Unit Change	Honda Change In Dealer ASA	Comments, Other Actions in Market
Majestic Honda Sales**	23.1	513	410	-20.1%	-103	+341	Out of State, Not in Market
Maroon Honda of Hollywood Sales	9.7	2,565	2,052	-20.0%	-513	+620	Sales lost to Maroon Honda of Miami
Clair Honda Sales**	4.6	890	729	-18.1%	-161	+375	Built New Facility on Site 2003/2004
Premier Honda Sales**	17.7	546	450	-17.6%	-96	+10	Nationwide sales only down 3%
College Park Honda Sales	12.9	1,608	1,370	-14.8%	-238	+94	Tischer Buy/Sell 2001
Ken Dixon Honda Sales	21.0	583	500	-14.2%	-83	+65	Tischer Buy/Sell 2001
Lokey Honda Sales	8.8	1,345	1,189	-11.6%	-156	+97	Crown Honda relocated 2001
Rick Roush Honda Sales	24.3	1,103	995	-9.8%	-108	+189	25 Miles, Out of Market
Honda of Covington Sales**	24.2	653	608	-6.9%	-45	+97	24 Miles, Out of Market
Babylon Honda Sales	5.8	1,400	1,315	-6.1%	-85	+328	
Weir Canyon Honda Sales**	18.3	698	659	-5.6%	-39	+28	
Weymouth Honda Sales**	11.8	863	821	-4.9%	-42	+314	
Ray Fladeboe Honda Sales**	6.6	1,405	1,354	-3.6%	-51	+251	Raised then lowered price, Hardin new GSM, Built new facility on site
Brighton Honda Sales***	18.8	719	701	-2.5%	-18	+135	19 Miles, Out of Market
Tischer Honda Sales	11.1	631	617	-2.2%	-14	+219	New Operator
Alton Blakey Honda Sales	51.0	199	197	-1.0%	-2	+38	
Huntington Honda Sales	9.2	3,177	3,159	-0.6%	-18	+275	
Nardy Honda Sales	10.1	1,309	1,305	-0.3%	-4	+253	
Sport Honda Sales	9.1	1,144	1,142	-0.2%	-2	+297	
Bernardi Honda Sales**	11.2	1,419	1,417	-0.1%	-2	+267	Built New Facility on Site 2003
Baron Honda Sales	13.2	999	1,000	0.1%	1		
Tamaroff Honda Sales***	7.7	832	835	0.4%	3		
Northwest Honda Sales	16.6	789	792	0.4%	3		
Sunnyside Honda Sales	25.0	880	906	3.0%	26		
Herson's Honda Sales	6.6	2,060	2,126	3.2%	66		
Jay Honda Sales	14.5	1,302	1,346	3.4%	44		
Coral Spring Honda Sales	13.8	2,680	2,802	4.6%	122		
Mike Pruitt Honda Sales	10.6	1,033	1,123	8.7%	90		
Pohanka Honda Sales	13.9	749	819	9.3%	70		
Honda West Sales	14.7	1,178	1,289	9.4%	111		
Lindell Honda Sales	16.0	1,067	1,199	12.4%	132		
Maroon Honda of Miami Sales	10.4	1,733	1,961	13.2%	228		
Herson's Honda Sales	13.6	2,186	2,488	13.8%	302		
Park Honda Sales	19.7	917	1,050	14.5%	133		
Tampa Honda Land Sales	17.0	1,126	1,300	15.5%	174		
Crown Honda Sales	15.2	1,017	1,179	15.9%	162		
Leesburg Honda Sales	16.3	724	851	17.5%	127		
Wesoloh Honda Sales**	12.0	897	1,085	21.0%	188		
Don Jacobs Honda Sales	22.5	889	1,084	21.9%	195		
Honda Santa Ana Sales**	14.6	819	1,001	22.2%	182		
Howard Cooper Honda Sales***	22.0	751	922	22.8%	171		
Pai Peck Honda Sales**	42.4	539	668	23.9%	129		
Brown's Honda City Honda Sales	17.5	722	900	24.7%	178		
Shockey Honda Sales	27.5	522	657	25.9%	135		
Ourisman Honda Sales	12.7	528	682	29.2%	154		
Anderson Honda Sales***	11.5	927	1,236	33.3%	309		
Silko Honda Sales**	22.6	606	809	33.5%	203		
Fischer Honda Sales***	18.6	374	506	35.3%	132		
O'Donnell Honda Sales	8.6	1,190	1,673	40.6%	483		
Rosenthal Honda Sales	17.1	1,109	1,609	45.1%	500		
Heritage Honda of Westminster Sales	24.7	363	561	54.5%	198		
Gateway Honda Sales	15.5	473	738	56.0%	265		
Honda Cars of Corona Sales**	17.0	648	1,111	71.5%	463		
Desert Honda Sales	8.9	1,010	1,753	73.6%	743		
Sunshine Honda Sales***	8.3	702	1,410	100.9%	708		
Norm Reeves Honda Temecula Sales**	27.4	855	1,728	102.1%	873		
TOTALS		57,966	64,189				
AVERAGE INCREASE				10.7%			

Summary

Percent Change	Number of Dealers	% of Total
-20.1% to -15%	4	7.1%
-15% to -10 %	3	5.4%
-5% to -10 %	4	7.1%
-5% to 0%	9	16.1%
0% to 5%	7	12.5%
5% to 10 %	3	5.4%
10% to 15%	4	7.1%
15% to 102%	22	39.3%
Totals	56	100.0%

Source: Urban Science

635758

Data By: R.L. Polk & Co. and AHM

*Sales in Study Area

**Dealer Sales Beyond Year After

***Dealer Sales 2000-2002

R-49

CHANGES IN SALES AND REGISTRATIONS
2000 - 2004

	2000	2001	2002	2003	2004	% Change 2000 - 2004
National Represented ASAs Honda Registrations	918,480	965,040	995,367	1,100,727	1,115,575	21%
Zone 5 Represented ASAs Honda Registrations	123,355	136,238	145,203	165,092	169,036	37%
ASA 6 - Norwood						
Boch Honda Sales*	0	172	1,897	2,718	2,679	
Boch Honda National Sales	0	257	3,035	3,982	4,194	
Actual Honda Registrations	1,022	1,068	1,502	1,814	1,687	65%
Expected** Honda Registrations	1,070	1,124	1,169	1,406	1,395	30%
ASA 1 - Lincoln, Rhode Island						
Majestic Honda Sales*	513	522	417	438	410	-20%
Majestic Honda National Sales	1,086	1,136	875	910	864	-20%
Actual Honda Registrations	1,041	1,113	1,138	1,380	1,382	33%
Expected** Honda Registrations	985	1,072	1,093	1,296	1,352	37%
ASA 2 - Weymouth						
Weymouth Honda Sales*	863	917	872	838	821	-5%
Weymouth Honda National Sales	1,023	1,089	1,052	1,008	991	-3%
Actual Honda Registrations	1,449	1,381	1,585	1,805	1,763	22%
Expected** Honda Registrations	1,691	1,755	1,774	2,104	2,107	25%
ASA 3 - Natick						
Bernardi Honda Sales*	1,419	1,405	1,256	1,388	1,417	0%
Bernardi Honda National Sales	2,791	2,755	2,559	2,845	2,877	3%
Actual Honda Registrations	1,551	1,440	1,556	1,785	1,818	17%
Expected** Honda Registrations	1,262	1,315	1,297	1,470	1,505	19%
ASA 4 - Boston						
Clair Honda Sales*	890	816	579	640	729	-18%
Clair Honda National Sales	1,320	1,134	913	949	1,076	-18%
Actual Honda Registrations	1,120	1,235	1,422	1,652	1,495	33%
Expected** Honda Registrations	1,028	1,125	1,172	1,331	1,318	28%
ASA 5 - Raynham						
Silko Honda Sales*	606	780	732	804	809	33%
Silko Honda National Sales	744	1,039	1,044	1,235	1,167	57%
Actual Honda Registrations	836	1,029	1,132	1,314	1,289	54%
Expected** Honda Registrations	1,210	1,301	1,366	1,644	1,650	36%
Adjacent Dealers (5)						
Dealers' Sales*	4,291	4,440	3,856	4,108	4,186	-2%
Dealers' National Sales	6,864	7,153	6,443	6,947	6,975	0%
Actual Honda Registrations	5,997	6,198	6,830	7,916	7,747	29%
Expected** Honda Registrations	6,175	6,568	6,705	7,842	7,830	28%

*Norwood Area Sales

**Zone 5 Represented ASAs Average Adjusted For Local Segment Popularity

GEOG REF: H00-COMP_Norwood_MA_Area

SOURCE: USAI Using R.L. Polk & Co. and AHM Data
633886

CONFIDENTIAL

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-2080

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)

PH AUTOMOTIVE HOLDING CORPORATION)
dba PACIFIC HONDA,)

Protestant,)

v.)

AMERICAN HONDA MOTOR CO., INC.,)

Respondent.)

Protest No. PR-1945-05

PROPOSED DECISION

In the Matter of the Protest of)

CUSH AUTOMOTIVE GROUP dba CUSH)
HONDA SAN DIEGO,)

Protestant,)

v.)

AMERICAN HONDA MOTOR CO., INC.,)

Respondent.)

Protest No. PR-1946-05

In the Matter of the Protest of)

TIPTON ENTERPRISES, INC., dba)
TIPTON HONDA,)

Protestant,)

v.)

AMERICAN HONDA MOTOR CO., INC.,)

Respondent.)

Protest No. PR-1947-05

1	In the Matter of the Protest of)	
2	BALL AUTOMOTIVE GROUP dba BALL)	
3	HONDA,)	Protest No. PR-1948-05
4	Protestant,)	
5	v.)	
6	AMERICAN HONDA MOTOR CO., INC.,)	
7	Respondent.)	

PROCEDURAL BACKGROUND

1. By letters dated March 11, 2005, to PH Automotive Holding Corporation dba Pacific Honda, ("Pacific Honda"), Tipton Enterprises, Inc., dba Tipton Honda, ("Tipton Honda"), and Ball Automotive Group dba Ball Honda, ("Ball Honda"), and March 14, 2005, to Cush Automotive Group dba Cush Honda San Diego, ("Cush Honda"), Respondent American Honda Motor Co., Inc. (hereinafter referred to as "AHM" or "Honda") gave notice pursuant to California Vehicle Code¹ section 3062 of its intention to establish a new Honda franchise at Costa Bella and Lemon Grove Avenue in Lemon Grove, California which is within 10 miles of the Protestants.

2. The New Motor Vehicle Board ("Board") received AHM's notice on March 17, 2005.

3. On March 24, 2005, timely protests were filed by Protestants Pacific Honda, protest number PR-1945-05; Cush Honda, protest number PR-1946-05; Tipton Honda, protest number PR-1947-05; and Ball Honda, protest number PR-1948-05.

4. Pursuant to stipulation by the parties the Board entered an order dated April 4, 2005 consolidating all of the above-named protests.

¹ All statutory references are to the California Vehicle Code, unless otherwise indicated.

1 5. Pursuant to Section 3066, a ten (10) day hearing was held
2 before Administrative Law Judge Merilyn Wong between September 19-23,
3 26-30, 2005 at the Board offices in Sacramento, California.

4 6. Protestants are represented by Michael J. Flanagan of the
5 Law Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite
6 450, Sacramento, California and Jonathan A. Michaels of Burkhalter,
7 Michaels, Kessler & George, 4 Park Plaza, Suite 850, Irvine,
8 California.

9 7. Respondent AMH is represented by Wallace M. Allan and Eric
10 Y. Kizirian of O'Melveny & Meyers LLP, 402 South Hope Street, Los
11 Angeles, California.

12 8. Upon submission of post-hearing briefs by the parties the
13 matter was deemed submitted on December 23, 2005.

14 9. Protestants called as their expert witness Ernest H. Manuel,
15 Jr., Ph.D., President of the Fontana Group, Inc., an automobile
16 industry-consulting firm. Other witnesses included: AHM employees
17 Michael J. Lynch (Honda's western zone sales manager), William Green
18 (Honda's manager of market planning), and Christopher Brabham (former
19 assistant manager in Honda's market planning department); Gary Sorter;
20 Edward Schafer, employee of the San Diego Association of Governments
21 known as SANDAG; and Richard David Vann, Sunroad Asset Management
22 Company employee. Protestants submitted the deposition testimony of
23 Richard Colliver, Executive Vice-President of AHM with counter-
24 designations submitted by Respondent. Party witnesses included John
25 Ball, President of Ball Automotive Group; Michael Peterson, General
26 Manager for Tipton Honda; Wayne B. Meyerowitz ("Meyer"), Executive
27 Vice-President of Sunroad Auto Holding Corporation and President of
28 Sunroad Automotive Division which owns Pacific Honda and Kearny Mesa

1 Ford; and John Turja, General Manager for Cush Honda.

2 10. Respondent called as its expert witness James A. Anderson,
3 President of Urban Science Applications Inc., an automobile-consulting
4 firm. Other witnesses included: Gary Sorter; Graham Mitchell, City
5 Manager of Lemon Grove; and Man-Chong (Manny) Chang employee of DCH
6 Management Services. Party witnesses for AHM included Michael J.
7 Lynch and William Green.

8 11. On December 22, 2005, Judge Wong visited the proposed site
9 in Lemon Grove and the following dealerships with their respective
10 representatives and AHM present: Tipton Honda with Michael Lynch of
11 AHM and Michael Peterson present; Ball Honda with Michael Lynch and
12 John Ball present; Cush Honda of San Diego with Michael Lynch and John
13 Turja present; the proposed Lemon Grove location with Michael Lynch,
14 Gary Sorter, employee of DCH Automotive² ("DCH") and Norm Reeves,
15 Temecula, and Jonathan Michaels, Esq. present. The trier of fact
16 drove by the Pacific Honda dealership.

17 ISSUES PRESENTED

18 12. Under Section 3062(a)(1) a franchisor is not permitted to
19 establish an additional motor vehicle dealership, where a timely
20 protest has been filed, until there has been a finding of whether or
21 not good cause exists for not permitting the establishment. Under
22 Section 3066(b) the franchisee has the burden of proof to establish
23 that there is good cause not to enter into a franchise establishing an
24 additional motor vehicle dealership.

25 13. In determining whether there is good cause for the
26 establishment of an additional franchise, Section 3063 requires the

27
28 ² DCH Automotive is the company that was awarded the Lemon Grove point.

1 Board consider the existing circumstances, including but not limited
2 to:

- 3 a) Permanency of the investment.
- 4 b) Effect on the retail motor vehicle business and the consuming
5 public in the relevant market area.
- 6 c) Whether it is injurious to the public welfare for an additional
7 franchise to be established.
- 8 d) Whether the franchisees of the same line-make in that relevant
9 market area are providing adequate competition and convenient
10 consumer care for the motor vehicles of the line-make in the
11 market area which shall include the adequacy of motor vehicle
12 sales and service facilities, equipment, supply of vehicle parts,
13 and qualified service personnel.
- 14 e) Whether the establishment of an additional franchise would
15 increase competition and therefore be in the public interest.

16 CONTENTIONS OF THE PROTESTANTS

17 14. Protestants contend that each of them will experience
18 substantial negative impacts on sales, service and profitability if
19 the establishment of a new dealership in Lemon Grove is permitted.

20 15. Protestant Tipton Honda contends that it will be
21 particularly devastated by the establishment of the Lemon Grove
22 dealership and will have the viability of its business threatened.
23 Protestants argue that the protest must be sustained even if it is
24 shown that Tipton Honda is the only dealer that will suffer
25 significant financial losses which will threaten its continued
26 existence.

27 16. Protestants contend that the Lemon Grove relevant market
28 area ("RMA") is not experiencing sufficient population or household

1 growth to support the establishment of an additional dealership.³

2 17. Protestants contend that the proposed general manager for
3 the dealer operator who was awarded the proposed Lemon Grove point
4 unfairly obtained the right to the point through his relationship with
5 AHM management.

6 18. Protestants contend that the Orange County metro standard
7 used by AHM to measure the protesting dealers' performance is
8 inappropriate because the household incomes in the Orange County metro
9 are significantly higher than the household incomes in the Lemon Grove
10 RMA, and consumers in the Lemon Grove RMA prefer to purchase domestic
11 vehicles over imports. [See paragraphs 50-51]

12 a) FINDINGS OF FACTS RELATING TO PERMANENCY OF INVESTMENT
13 [Section 3063(a)]

14 Tipton Honda

15 19. Michael Peterson, who testified on behalf of Tipton Honda,
16 is the general manager and President of Tipton Honda. Mr. Peterson
17 has been employed at Tipton Honda since 1993 and is a minority
18 shareholder in the business. Harold B. Tipton is the majority owner
19 of Tipton Honda.

20 20. Tipton Honda has been in business since 1970. It was the
21 first Honda dealer in the San Diego area. Since the 1980's Tipton
22 Honda has been located at 889 Arnele Avenue, El Cajon.

23 21. The dealership has a five-year lease with the Tipton Family
24 Trust; the lease expires in 2010. The dealership property, including
25

26
27 ³ The "relevant market area" is an area within a radius of 10 miles from the site of
28 a potential new dealership. Section 507.

1 storage lots, is approximately six acres. The value of the land is
2 estimated at around \$5 million.

3 22. Tipton Honda has spent over \$1,350,000 for capital
4 improvements in the past six years. In 1999 approximately \$800,000
5 was spent to renovate the facilities and to bring the dealership into
6 compliance with Honda's image program. In 2000, \$250,000 was spent to
7 build a 2,000 square foot parts building. In 2002, new service bays
8 were added at a cost of \$200,000. In 2005, the dealership added a car
9 wash facility for its service customers at a cost of \$100,000.

10 Ball Honda

11 23. John Ball, who testified on behalf of Ball Honda, is the
12 President of Ball Automotive Group. Mr. Ball has worked at Ball Honda
13 since 1979.

14 24. Ball Honda has been operating as a Honda dealer since 1972.
15 In 2002, Ball Honda moved to its current location at 2135 National
16 City Boulevard, National City, where it built new facilities in
17 compliance with Honda's image program.

18 25. Mr. Ball is the majority shareholder of Ball Automotive; his
19 father John David Ball owns the remaining shares. Ball Automotive
20 also owns dealerships of the following line-makes: Mitsubishi, Acura,
21 and GMC Truck.

22 26. Ball Automotive expended approximately \$2.3 million for both
23 the land and construction costs of its new facilities. The real
24 property is approximately five acres. The land and buildings are
25 owned by Ball Leasing Company which is owned by the elder John Ball
26 and his wife. Ball Honda rents from Ball Leasing Company.

27 ///

28 ///

1 Cush Honda⁴

2 27. John Turja, testifying on behalf of Cush Honda, has been its
3 general manager for 7 ½ years. Steve Cushman owns Cush Honda.

4 28. Cush Honda has been in operation since 1993. In 1998 it
5 moved to its current location at 5812 Mission Gorge, San Diego.

6 29. The current facility, a former Nissan store, is located on
7 about 5 acres of land with about 5,000 square feet of facilities
8 space. In 2004 the buildings owned by the dealership were valued at
9 \$2.3 million.

10 30. The property is leased from a separate entity unrelated to
11 the dealership, although the dealership does have an option to
12 purchase the property.

13 Pacific Honda

14 31. Wayne B. Meyer, who testified on behalf of Pacific Honda, is
15 the Executive Vice-President of Sunroad Auto Holding Corporation and
16 President of Sunroad Automotive Division. Pacific Honda is owned by
17 Sunroad Auto Holding Corporation. The parent corporation, Sunroad
18 Holding Corporation, is owned by Aaron Feldman.

19 32. Sunroad Auto Holding Corporation has owned Pacific Honda and
20 Kearny Mesa Ford since the 1980's. It also owns a Toyota dealership
21 in Tijuana, Mexico and is building a Toyota dealership in Chula Vista
22 which is scheduled to open in the spring of 2006.

23 33. Pacific Honda is located at 4761 Convoy Street in Kearny
24 Mesa. The dealership occupies multiple sites in the area.

25 _____
26 ⁴ On January 13, 2006, the Board received a letter from UnitedAuto stating that it
27 had purchased Cush Automotive Group including Cush Honda and sought to dismiss
28 Protest No. PR-1946-05. As of the signing of this Proposed Decision, a request for
dismissal has not been received and therefore, Cush Honda is included in this
Proposed Decision.

1 34. In March of 2004, Sunroad acquired an additional 2.2 acre
2 parcel and has begun construction of a new 16,000 square foot Honda
3 store. With its recent land acquisition, Pacific Honda now occupies
4 six acres of land.

5 35. The recent land acquisition and construction undertaking
6 will cost \$9 million bringing the total value of assets devoted to
7 Honda to \$17.5 million.

8 **Proposed Lemon Grove Site**

9 36. DCH is currently leasing the property at Costa Bella and
10 Lemon Grove Avenue, Lemon Grove. If the establishment is approved,
11 DCH will enter into a 34-year lease with an option to purchase the
12 property for \$6.4 million at the landowner's option or upon his
13 demise. The size of the property is 4.2 acres; off-site parking
14 which, has not yet been designated, will add another two acres to the
15 property available for the dealership.

16 37. If the protest is overruled DCH plans to invest an
17 additional \$8-\$8.5 million to construct new Honda facilities.

18 **GENERAL FINDINGS PERTAINING TO ALL PROTESTANTS**

19 38. Dr. Ernest Manuel, expert witness for Protestants, urges the
20 Board to consider additional categories under a permanency of
21 investment analysis. These include expenditures for employee training,
22 advertising, and policy expenses, which are used to enhance goodwill
23 for the dealership and the brand.

24 39. The additional categories do not need to be adopted or
25 addressed in these protests as each protesting dealer has shown that
26 it has a substantial and permanent investment without using these
27 categories.

28 ///

b) FINDINGS OF FACT RELATING TO THE EFFECT ON THE
RETAIL MOTOR VEHICLE BUSINESS AND THE CONSUMING
PUBLIC IN THE RELEVANT MARKET AREA
[Section 3063(b)]

40. James A. Anderson is President of Urban Science Applications, Inc. ("Urban Science"). Urban Science primarily works for manufacturers in the automotive industry and has clients that include: General Motors, Ford, DaimlerChrysler, Volkswagen, Nissan, Toyota, Honda, Mazda, Mitsubishi, Hyundai, Kia, Suzuki, and BMW.

41. Urban Science's three practice areas are network, site, and customer analysis. Network analysis measures dealer performance and determines the appropriate number and location of outlets necessary to adequately serve the market area.

42. Site analysis measures individual dealer performance; and customer analysis is used to increase dealer sales of new vehicles.

43. Urban Science was retained in this case by AHM to determine if Honda is adequately represented by the dealer network in the San Diego metro and Lemon Grove RMA. If Honda representation was found to be inadequate, then Mr. Anderson was asked to determine the likely cause.

44. If the Lemon Grove add point is an appropriate solution to Honda's inadequate representation, then Mr. Anderson was asked to evaluate what the likely impact of the establishment of the Lemon Grove point would be upon the protesting dealers. He was also asked to determine the impact upon consumers and the Honda brand.

45. Mr. Anderson used the following six steps to analyze dealer networks: 1) define the geographic area of analysis; 2) develop a standard to measure dealer performance and opportunity available to the network; 3) measure the performance of the network; 4) determine

1 the cause of inadequate performance; 5) develop a proposed solution;
2 and, 6) assess the impact of the proposed solution on performance.

3 46. Dealers within AHM's network are assigned geographical areas
4 known as "ASAs" or Areas of Statistical Analysis. Honda's definition
5 of ASA: "A portion of a Multiple Point Market in which one Honda
6 dealer is located. Determined by analyzing air distance to the next
7 closest Honda dealer(s), cross-sell data and market characteristics
8 such as traffic and shopping patterns, geographical barriers, road
9 network, and competition." A Honda dealer's ASA is a group of census
10 tracts nearest that dealer where it enjoys a competitive advantage
11 over all other Honda dealers not in the ASA. This advantage is solely
12 based on its location where customers are closer and have better
13 access to that dealer than to any other dealer.

14 47. A metropolitan market such as San Diego is larger than an
15 ASA and may contain several ASAs. In metro markets, customers have
16 better access to multiple dealers. Honda's definition of Metro Market
17 is "A geographical area that includes two or more dealers for the same
18 manufacturer."

19 48. Once the geographic areas of analysis are defined, in this
20 case the Lemon Grove RMA and ASA, as well as the ASAs for the
21 protesting dealers, and the San Diego metro, the next step is to
22 devise an appropriate standard to measure dealer performance and
23 opportunity available to the dealer network.

24 49. Dealer performance is measured against comparison areas
25 which are adjusted for variables that can affect penetration such as
26 consumer preference. A comparison area must be independent of the
27 area being studied and be adequately represented.

28 50. The Orange County metro area was selected by Mr. Anderson as

a comparison area, because it is an independent area, adequately represented, and adjacent to the San Diego metro. Both state and national standards were also considered, although they are more conservative standards with lower penetration rates.

51. The Orange County metro and California State standard have similar penetration rates; however the state standard is more conservative because it includes both underperforming areas and adequately performing areas. The similarity of these standards is an indication that the Orange County metro standard is a reasonable and appropriate measure.

52. For the 2002 through 2004 calendar years, the penetration rates for the Orange County metro compared with the state and national standards are as follows:

AHM PENETRATION PERCENTAGE COMPARISON COMPETITIVE REGISTRATIONS RETAIL PASSENGER VEHICLE			
YEAR	Orange County Metro	California	National
2002*	21.95%	20.40%	13.98%
2003	22.92%	22.45%	16.28%
2004	22.14%	21.93%	16.26%

* Includes Honda Prelude and Small Sporty Segment
Small Sporty Segment not included in 2003 and 2004

53. Performance standards are adjusted for consumer preferences in the local market. Segmentation analysis adjusts for these differences by separating all new vehicles sold and registered in the marketplace into segments of like vehicles. Like vehicles refer to physical and performance characteristics, as well as consumer perception, and are named by size, price, and function.

1 54. In looking at the Honda brand, the Honda Insight is
2 identified within the sub-small segment of cars; the Civic is within
3 the small car segment; the Accord is within the mid-size segment; the
4 S2000 is within the sport luxury segment; the CR-V and Element are
5 within the mini-SUV segment; the Pilot is within the compact SUV
6 segment; and the Odyssey is within the compact van segment.

7 55. Honda's definition of a competitive segment is "A group of
8 vehicle models that have been identified to most directly compete with
9 and are cross-shopped against a particular Honda vehicle." An example
10 of the competitive products within a segment would include the Civic
11 in the small segment competing against vehicles such as the Chevrolet
12 Cavalier, Mitsubishi Lancer, Pontiac Sunfire and Toyota Corolla.

13 56. Segmentation analysis further adjusts for demographic
14 characteristics that influence consumer choice. Demographic
15 differences in the marketplace and their impact upon new vehicle sales
16 are expressed by the types of vehicles which consumers actually
17 purchase. Segmentation analysis takes into account popularity shifts
18 within segments which may be affected by demographic characteristics,
19 such as income and family size.

20 57. For example, Honda does not have a vehicle that competes in
21 the luxury car segment. If sales of luxury cars are greater in higher
22 income areas, then Honda's performance in this area would be
23 significantly reduced. In a hypothetical situation where all the
24 registrations in an ASA are luxury cars then the expected registration
25 for the Honda dealer would be zero.

26 58. Similarly if consumers prefer mid-sized cars over small
27 cars, this preference would be demonstrated in the registrations in
28 the marketplace for that particular segment of cars.

59. The Orange County metro standard adjusted through segmentation analysis is a reasonable standard to measure dealer performance in the Lemon Grove RMA and ASA.

60. AHM's performance in the Lemon Grove RMA, based on the Orange County standard from 2002 through 2004 as expressed as a percentage of effectiveness with 100% being the expected average, is as follows:

HONDA RETAIL REGISTRATION EFFECTIVENESS LEMON GROVE RMA AS A PERCENT OF EXPECTED*			
	2002	2003	2004
Net Registration Loss	1,612	961	927
% Effectiveness w/In-Sell ⁵	77.9%	85.5%	87.6%
% Effectiveness of RMA Dealers' Contribution	56.5%	61.1%	62.8%

*Orange County Metro Average Adjusted for Local Segment Popularity

61. Although the Lemon Grove ASA is geographically smaller than the Lemon Grove RMA, when applying the same analysis to the Lemon Grove ASA the results are similar.

HONDA RETAIL REGISTRATION EFFECTIVENESS LEMON GROVE ASA AS A PERCENT OF EXPECTED*			
	2002	2003	2004
Net Registration Loss	362	188	244
% Effectiveness w/In-Sell	73.1%	84.8%	82.3%
% Effectiveness of RMA Dealers' Contribution	57%	63.6%	63.6%

*Orange County Metro Average Adjusted for Local Segment Popularity

62. Similar results are obtained when AHM's performance in the Lemon Grove RMA is compared to California State standards. Although registration effectiveness is greater, it still falls short of 100%.

///

⁵ Honda defines in-sell as: "Identifies Honda registrations within a market that were sold by dealers located outside the market area."

HONDA RETAIL REGISTRATION EFFECTIVENESS
LEMON GROVE RMA AS A PERCENT OF CALIFORNIA REPRESENTED MARKETS*

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Net Registration Loss	1,060	815	864
% Effectiveness w/In-Sell	84.3%	87.4%	88.3%
% Effectiveness of RMA Dealers' Contribution	61.2%	62.4%	63.4%

*California Represented Markets' Average Adjusted for Local Segment Popularity

63. AHM's performance in the Lemon Grove ASA when compared to California State standards yields the following:

HONDA RETAIL REGISTRATION EFFECTIVENESS
LEMON GROVE ASA AS A PERCENT OF CALIFORNIA REPRESENTED MARKETS*

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Net Registration Loss	262	161	231
% Effectiveness w/In-Sell	79%	86.7%	83.1%
% Effectiveness of RMA Dealers' Contribution	61.5%	65%	64.2%

*California Represented Markets' Average Adjusted for Local Segment Popularity

64. Based on the significant shortfall in registrations, Mr. Anderson concludes that Honda is inadequately represented in the Lemon Grove RMA and Lemon Grove ASA. This is also the case when the same analysis is applied to the South County market and the San Diego metro. South County had a shortfall of 977 registrations in 2004 and the San Diego metro had a shortfall of 1,837 registrations in 2004.

65. The inadequate representation reflects the fact that the existing dealer network has failed to capture the opportunities for sales available in the Lemon Grove RMA and can be attributed to dealer network factors such as number of dealers, location of dealers or operations of existing dealers.

66. The San Diego metro includes the four protesting dealers, plus Hoehn Honda, Carlsbad; Poway Honda, Poway; Cush Honda Escondido,

1 Escondido; and Fuller Honda, Chula Vista. An open point in Vista and
2 the proposed Lemon Grove add point were included in the San Diego
3 metro.

4 67. Mr. Anderson doubts that the San Diego metro operates for
5 consumers as one contiguous, well-connected market. Based on cross-
6 sell⁶ data, Mr. Anderson has created an additional area called South
7 County, from which the protesting dealers and the proposed Lemon Grove
8 point are expected to conduct most of their sales.

9 68. South County dealers include Tipton Honda, Ball Honda, Cush
10 Honda-San Diego, Pacific Honda and Fuller Honda. Most of the sales by
11 these dealers occur in the South County area in the following
12 percentages: Tipton Honda at 85.3%; Ball Honda at 89.8%; Cush Honda at
13 88.9%, Pacific Honda at 73.9%, and Fuller Honda at 90.1%.

14 69. Between 1990 and 2004, the Lemon Grove RMA and ASA have
15 experienced moderate but steady population and household growth
16 trends. This trend is projected to continue through 2009. The San
17 Diego metro and South County will also experience population growth.
18 South County is where the protesting dealers will most likely compete
19 with Lemon Grove for sales.

20 70. The median household income of a Honda customer is \$77,000.
21 Both the Lemon Grove RMA and the San Diego metro have a number of
22 households with incomes of \$77,000 or greater.

23 71. The income level of most Honda buyers is between \$35,000 and
24 \$90,000. The Lemon Grove area is projected to have one of the largest
25 population increases in the \$50,000 and higher income categories.

26
27 ⁶ Cross-sell occurs when customers from one ASA go to another to buy and dealers in
28 the other ASA sell to customers in the first ASA. There is a two-way flow of
customers between two dealers in different ASAs.

1 72. Dr. Manuel testified that the Orange County metro is not a
2 good benchmark to evaluate dealer performance, because Orange County
3 has households with significantly higher incomes than the San Diego
4 metro. He believes that income is a significant factor in accounting
5 for AHM's high performance in the Orange County metro and AHM's poor
6 performance in the Lemon Grove RMA.

7 73. Dr. Manuel also testified that AHM's segment definitions
8 include Honda models which tend to be preferred by higher income
9 buyers than domestic models in the same segment and is thereby causing
10 the domestic preference in the RMA.

11 74. According to Mr. Anderson the process of segmentation
12 analysis accounts for both income differences and domestic preference
13 in the market place. [See paragraph 56 page 13]

14 75. Mr. Anderson demonstrated how segmentation adjusts for both
15 these characteristics by examining other areas such as Sacramento,
16 Davis, Elk Grove, the Bay Area, El Cerrito, and Dublin, all of which
17 have similar household incomes and sizes to the Lemon Grove RMA, but
18 where AHM has higher penetration rates.

19 76. The next step in Mr. Anderson's analysis requires the
20 examination of the dealer network to determine whether it is the
21 source of poor performance in the Lemon Grove RMA and the San Diego
22 Metro. The following lists dealer count of AHM and its competitors.

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Dealer Count Comparison
AMERICAN HONDA MOTOR CO., INC.

<u>Manufacturer</u>	<u>Dealers within Lemon Grove RMA</u>	<u>Dealers in San Diego Metro</u>
FORD	6	13
CHEVROLET	5	12
SCION	5	9
TOYOTA	5	9
BUICK	3	7
CHRYSLER	4	7
DODGE TRUCK	4	7
HONDA	4	8
JEEP	4	7
GMC TRUCK	3	7
HYUNDAI	3	6
ISUZU	3	3
KIA	3	5
MAZDA	3	5
NISSAN	3	7
PONTIAC	3	7
SATURN	3	5
VOLKSWAGEN	3	8
BMW	2	5
MITSUBISHI	2	4
SUBARU	2	3
SUZUKI	2	4
AUDI	1	3
LINCOLN, MERCURY	1	2
MERCEDES-BENZ	1	3
PORSCHE	0	2
MINI	0	1
Total	78	159

77. An analysis of the dealer count in the Lemon Grove RMA shows that Honda should increase its present dealer count from four to five dealers. The lower dealer count for AHM relative to its competition is the most likely cause of market share below the Orange County metro.

78. The result of too few dealers is relatively poor customer convenience and weak intrabrand competition among the Honda dealer

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network, which leads to weak interbrand⁷ competition against Honda's competitors. Brand visibility obtained by adding an outlet would increase both interbrand and intrabrand competition.

79. The sales effectiveness of the Protestants and the proposed Lemon Grove dealer is demonstrated by two-mile concentric rings around the dealerships. One hundred percent equals the entire brand opportunity. The chart below represents the percentage of opportunity each dealer captures within each two-mile ring.

SAN DIEGO METRO DEALER REGISTRATIONS AS A PERCENT OF EXPECTED* REGISTRATIONS VS DISTANCE FROM DEALERSHIP					
Mile Radius	Tipton	Ball	Cush	Pacific	Lemon Grove**
2 miles	44.4%	30.7%	34.6%	45.0%	38.3%
4 miles	35.9%	29.2	28.2%	34.8%	31.7%
6 miles	31.3%	19.4%	20.3%	30.6%	25.0%
8 miles	16.8%	14.6%	16.8%	24.7%	18.4%
10 miles	9.2%	8.8%	12.8%	18.6%	12.8%
12 miles	6.9%	4.4%	10.9%	11.4%	8.7%
14 miles	5.4%	3.2%	8.5%	8.6%	6.6%
16 miles	4.5%	2.7%	6.3%	8.9%	5.7%
18 miles	3.3%	3.1%	3.7%	7.7%	4.7%
20 miles	4.5%	2.3%	3.2%	7.5%	4.8%

* Orange County Metro Adjusted for Census Tract Segment Popularity

**Projected percentage based on the average of the four dealers.

80. Protestants capture the highest percentages of sales within a six-mile radius of their dealership, with the exception of Pacific Honda, which captures its highest percentages within an eight-mile

⁷ Intrabrand competition is market competition among dealers of the same line-make. Interbrand competition is market competition among dealers of other line-makes.

radius.

81. A consequence of too few dealers in the RMA allows competitors to offer higher levels of customer convenience, which is measured by accessibility to dealerships. Customer convenience can be measured as the average distance consumers must go to the nearest dealer of a particular line-make. The chart below illustrates the average distances for Honda and its competitors.

CUSTOMER CONVENIENCE ANALYSIS BASED ON 2004 COMPETITIVE REGISTRATIONS LEMON GROVE ASA	
Manufacturer	Average Distance to Nearest Dealer (Miles)
Toyota	3.0
Buick	3.2
GMC	3.2
Pontiac	3.2
Ford	3.6
Chevrolet	3.7
Chrysler	3.8
Jeep	3.8
Dodge	3.8
Isuzu	3.8
Volkswagen	3.9
Hyundai	3.9
Mazda	4.7
Kia	4.8
Honda	4.9

82. The likely cause of the inadequate Honda performance is too few dealers, which means that Honda is unable to offer adequate levels of customer convenience compared to its competitors in the Lemon Grove ASA. An inadequate dealer network results in inadequate levels of customer convenience. A solution to increase dealer count is appropriate, in that it addresses the need for improved customer convenience particularly in areas where population and households are growing.

1 83. Solutions to inadequate dealer count rely on an optimal
2 location analysis. An optimal location analysis evaluates and selects
3 the location that provides the highest level in improvement of
4 customer convenience for all customers in the area being studied.
5 Under this analysis, the proposed Lemon Grove site is located in an
6 area that enhances customer convenience and will improve customer
7 convenience as expressed in average drive distances from its current
8 4.9 miles to 2.9 miles in the Lemon Grove ASA.

9 84. Dr. Manuel testified that based on his data an optimal
10 location for an additional dealership would be located in Del Mar.
11 Mr. Sorter testified that due to zoning restrictions, additional car
12 dealerships are no longer permitted in Del Mar or in nearby Carmel
13 Valley.

14 85. The next step in Mr. Anderson's process is to consider the
15 impact of the proposed Lemon Grove site on the existing dealers. This
16 requires a projection of reasonable sales performance by the new
17 dealer and then a determination of whether the sales opportunities
18 available to the new dealer will occur at the expense of the existing
19 dealers.

20 86. Sales opportunities are available to a dealer through
21 interbrand competition or conquest sales, and intrabrand competition
22 or in-sell sales. Gross registration losses are those opportunities
23 or registrations made by Honda's competitors and are the result of
24 interbrand competition. Intrabrand competition caused by in-sell are
25 lost opportunities because consumer studies show that the reasons
26 consumers do not purchase from the most convenient dealer selling that
27 same line-make are price, selection, service or sales approach. The
28 assumption is that the dealer is able to control any or all of these

factors and thereby attract more customers.

87. As indicated on the chart below, using the Orange County metro standard, the total gross lost opportunity in the RMA in 2004 was 3,073 registrations.⁸ The gross lost opportunity consisted of 1,206 gross registration loss from interbrand competition and 1,867 registration loss from in-sell.

IMPACT REPORT DECEMBER 2004 YTD PASSENGER VEHICLE REGISTRATIONS			
Distance from Proposed Lemon Grove Location (miles)	Lemon Grove RMA Expected** Registrations	Average RMA Dealer Penetration of Expected Passenger Vehicles Registrations	Projected Retail Registrations for Lemon Grove Location*
0 - 2	469	38.25%	179
2 - 4	1,289	31.67%	408
4 - 6	1,762	25.02%	441
6 - 8	2,144	18.41%	395
8 - 10	1,821	12.76%	232
Projected Registrations within 10 Miles of Proposed Lemon Grove Location			1,655

Source of Registrations:

Gross Registration Loss at Expected**	1,206
In-Sell Registrations	1,867
Total Lost Opportunity	<u>3,073</u>
Projected Registrations as a Percent of Lost Opportunity at the Proposed Location	53.9%

* Assumes the proposed Lemon Grove dealer will have the same penetration profile as the average RMA dealer

** Orange County Metro Adjusted for Census Tract Segment Popularity

88. If the proposed new dealer achieves sales effectiveness equal to the average sales effectiveness by two-mile rings its sales would

⁸ Mr. Anderson defines gross lost opportunity as lost opportunity within a market. Net lost opportunity is lost opportunity in a market after offsetting market losses with market gain.

total 1,655. Even with these sales there would still be ample opportunity of 1,418 sales available to RMA dealers. Using a penetration rate which is the average of the RMA dealers, the proposed Lemon Grove dealer would capture 53.9% of the lost opportunity. If the proposed dealer performed as well as the strongest dealer, which is Pacific Honda, then it would capture 2,068 of the lost opportunity or 67.3%, which would still leave 1,000 registrations available to the existing dealers.

89. This data is expressed in the chart below. Pacific Honda has the highest penetration numbers and therefore its numbers are being used to show the effect upon the RMA if the proposed dealer performs at that same level.

LEMON GROVE RMA DECEMBER 2004 PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING EXPECTED AVERAGE UNDER ORANGE COUNTY METRO		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	53.9%	59.2%
Pacific Honda Penetration Profile	67.3%	74.0%

90. All of the penetration figures are expressed in both gross and net registration loss. It is Dr. Manuel's position that net registration loss should be considered when performing impact analysis, whereas Mr. Anderson believes that gross registration loss should be used. The inclusion of both gross and net registration loss show the expected performance of the Lemon Grove dealer based on both viewpoints.

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91. For South County the results of impact assessment are as follows:

SOUTH COUNTY DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SOUTH COUNTY USING EXPECTED AVERAGE UNDER ORANGE COUNTY METRO		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	53.3%	66.4%
Pacific Honda Penetration Profile	68.0%	84.7%

92. For the San Diego metro the results of impact assessment are as follows:

SAN DIEGO METRO DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SAN DIEGO METRO USING EXPECTED AVERAGE UNDER ORANGE COUNTY METRO		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	45.7%	56.4%
Pacific Honda Penetration Profile	58.3%	72.0%

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93. Using the California State standard an impact analysis yields the following results:

LEMON GROVE RMA DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALERS AS A PERCENT OF TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING CALIFORNIA REPRESENTED MARKETS AVERAGE		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	54.6%	60.6%
Pacific Honda Penetration Profile	68.2%	75.7%

SOUTH COUNTY DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SOUTH COUNTY USING CALIFORNIA REPRESENTED MARKETS AVERAGE		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	54.2%	68.9%
Pacific Honda Penetration Profile	69.2%	87.9%

SAN DIEGO METRO DECEMBER 2004		
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF TOTAL OPPORTUNITY TO THE HONDA DEALERS IN SAN DIEGO METRO USING CALIFORNIA REPRESENTED MARKETS AVERAGE		
	Gross Registration Loss	Net Registration Loss
Average Lemon Grove RMA Dealer Penetration Profile	46.7%	58.7%
Pacific Honda Penetration Profile	59.7%	75.0%

94. All of the dealers have been in business for many years with loyal customers. Financial data from 2000 through 2004 show that all of the protesting dealers are financially strong and profitable.

1 95. Contrary to Dr. Manuel's analysis which does not include a
2 "stimulated competitive response", Mr. Anderson believes that if the
3 Protestants react positively to the increased competition they will
4 not lose sales, and they could increase sales.

5 96. Protestants can react to the increased competition by
6 adopting defensive strategies such as the reduction of profits per new
7 vehicle sold that are in excess of the zone average, and/or increase
8 their advertising dollars to bring expenditure rates up to zone,
9 and/or improve their sales effectiveness through the reduction of
10 dealership expenses to conform with zone averages.

11 97. AHM prepares a monthly report called the 2020 report, which
12 takes data from all its dealers' financial statements. The 2020
13 report shows dealers performance against average benchmarks.
14 Comparisons are made to zone averages which are based on all dealers
15 in the state and to group averages which are based on dealerships of
16 similar sizes.

17 98. Total expenses as a percentage of operating income would be
18 one performance indicator in the 2020 report. This would allow a
19 dealer to compare its expenses to others in the zone and group and by
20 doing so, it could compare its own efficiency to other dealers.
21 Operating expenses are significant because they are largely within the
22 control of the dealer.

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2004 EXPENSES AS A PERCENTAGE OF OPERATING INCOME

<u>Zone Average</u>	<u>Tipton</u>	<u>Cush</u>	<u>Pacific</u>	<u>Ball</u>
88.7%	98.6%	83.3%	72%	84.7%

YTD JUNE 2005 EXPENSES AS A PERCENTAGE OF OPERATING INCOME

<u>Zone Average</u>	<u>Tipton</u>	<u>Cush</u>	<u>Pacific</u>	<u>Ball</u>
88.4%	93%	78.6%	70.2%	85.6%

99. It is apparent that Tipton Honda's expenses as a percentage of operating income are far above that of the zone average and its percentage is the highest among the other protesting dealers. A reduction in the expense percentage could lead to increased profitability of the dealership.

100. Tipton Honda's advertising budget is the lowest of all the protesting dealers. Its percentage of advertising in service is also low which may account for the under utilization of its service facilities. Advertising is another expenditure which is under the control of the dealership and is a means of increasing sales and service activity.

101. Tipton Honda has the lowest sales effectiveness calculated by dividing the dealer's total nationwide sales by the expected Honda registrations within the dealer's ASA. Tipton's 2004 percentage of sales effectiveness of 77% is the lowest among the protesting dealers. If Tipton Honda were to perform like the average dealer in the Orange County metro with a 100% sales effectiveness, it would have to increase its sales by 539 units. The additional sales would result in an increase of \$600,000 profit.

1 102. Dr. Manuel assumes that new vehicle sales losses will
2 automatically translate into lost profits and thereby threaten the
3 viability of the dealership. However Mr. Anderson does not believe
4 that this is an inevitable outcome and in fact the reverse could occur
5 where profits can increase with fewer sales or profits could decline
6 with increased sales. For example Ball Honda sold 358 fewer vehicles
7 than Tipton Honda in 2004 but was nearly four times more profitable.
8 During the period of 2000 through 2004 each Protestant experienced one
9 year in which new car sales decreased compared to the year before, yet
10 profits increased. Profitability is dependent, in part, on the
11 efficiency and effectiveness of the management of the business.

12 103. As part of the evaluation process Mr. Anderson looked at
13 recent case studies of add points. The first involves the Family
14 Honda add point in Rancho Santa Margarita which opened in January 2001
15 and is adjacent to the San Diego metro. Family Honda made 1,408 sales
16 in 2002 and the other Honda dealers in the area increased their sales
17 from 5,322 to 5,620. In-sell declined from 53% to 46%. In this case
18 the addition of a new dealer stimulated competition making the dealer
19 network more interbrand competitive.

20 104. The next case study is the Shack-Findlay Honda add point in
21 the Las Vegas metro which opened in 1999. By 2000 the dealership sold
22 1,531 vehicles while other Honda dealers increased their sales from
23 2,555 units to 3,042. In-sell was reduced from 10% to 5.3%.

24 105. The third case study involved the relocation of Vista Honda
25 to Ventura. After the relocation, Honda's effective registrations
26 increased from 75% in 1996 to 96.7%. In 1998 sales by Vista Honda
27 increased from 374 units to 1,010. Honda dealers' registrations
28 increased from 3,070 in 1996 to 4,460 in 1998. In-sell registrations

1 decreased from 28.8% in 1996 to 20.9% in 1998.

2 106. The final case study is the Rick Case Honda add point in
3 Davie, Florida in March 2002. Honda's registration went from 72.2% in
4 2001 to 120.8% in 2003. Although the other Honda dealers experienced
5 a decline in sales of 164 units, in-sell registrations decreased from
6 34.8% to 19.3%.

7 107. Dr. Manuel presented several case studies in order to show
8 the negative impact upon existing dealers when a new dealer was
9 introduced into the area. While these case studies were of interest,
10 there were too many variables and exceptions to make a direct
11 correlation between the establishment of the new dealers and the
12 resulting loss of business to the existing dealers.

13 108. In summary Mr. Anderson concluded that Honda has not been
14 adequately represented in the Lemon Grove ASA and RMA, South County
15 and San Diego metro. The consequences of too few dealers are
16 inadequate customer convenience and inadequate intrabrand competition
17 which leads to inadequate interbrand competition.

18 109. The economic and market conditions, including growth in the
19 area support the addition of a new dealership. The proposed Lemon
20 Grove dealership location is very close to the optimal location and
21 has good accessibility from the highway system.

22 110. There is sufficient lost opportunity from interbrand
23 registrations and in-sell opportunity to permit the Lemon Grove
24 establishment without necessarily taking sales away from the
25 protesting dealers.

26 **c) FINDINGS OF FACT RELATING TO WHETHER THE ESTABLISHMENT OF AN**
27 **ADDITIONAL FRANCHISE WILL BE INJURIOUS TO THE PUBLIC WELFARE**
28 **[Section 3063(c)]**

111. Protestants failed to offer credible evidence that any of

1 the dealerships, particularly Tipton Honda, would go out of business
2 as a result of the establishment of the Lemon Grove point.

3 112. Although Dr. Manuel testified extensively as to projected
4 losses for the dealers, by his own admission, he did not believe that
5 three of the four Protestants would suffer significant losses that
6 would threaten the viability of their businesses.

7 113. With respect to Tipton Honda which is the least profitable
8 of the protesting dealers, Dr. Manuel did not consider factors within
9 the control of the dealership that could increase the profitability of
10 the dealership even in the face of increased competition.

11 114. It has not been shown that the establishment of a Honda
12 dealership in Lemon Grove will result in the closure of any of the
13 protesting dealerships, and therefore there has been no showing of
14 injury to the public welfare. In fact, from the perspective of the
15 City of Lemon Grove and its residents, the addition of the dealership
16 in Lemon Grove will be beneficial to the public welfare.

17 115. Graham Mitchell is the City Manager of Lemon Grove. Mr.
18 Mitchell testified that the city has adopted a master plan for mixed
19 use for the downtown area which includes 800 units of housing and
20 50,000 square feet of retail space. The area is adjacent to the
21 proposed Honda site. Parts of the city are being rezoned to increase
22 density which should attract more residents. There are plans in the
23 immediate future to develop 440 units of housing. In order to
24 generate tax revenues the city is seeking to attract car dealerships
25 and big-box stores. Mr. Mitchell believes that SANDAG's population
26 growth estimates for Lemon Grove are between 2 and 2- $\frac{1}{2}$ % lower than the
27 city's.

28 116. Mr. Mitchell believes that a well-built beautiful Honda

1 dealership will create a new gateway to the city, while replacing a
2 blighted industrial site. The location of a new Honda dealership
3 could stimulate further downtown development.

4 117. The establishment of a Honda dealership in Lemon Grove would
5 benefit the community of Lemon Grove through sales tax revenues
6 projected at \$640,000-\$800,000 annually and property taxes of \$30,000-
7 \$50,000 annually. Tax revenues generated by the dealership would
8 subsidize salaries for firefighters, police officers, and
9 administrative staff.

10 118. The proposed new dealership will initially have 75-80
11 employees and could have as many as 125-130 employees. The
12 dealership will be four stories high with good visibility from the
13 freeways. There will be 24 service stalls with future expansion plans
14 to 40 stalls. The second floor of the facility would be made
15 available for non-profit organizations to use as meeting rooms.

16 119. DCH, which will be the owner of the proposed dealership, is
17 a minority owned business which promotes AHM's objectives of
18 increasing minority owned businesses.

19 **d) FINDINGS OF FACT RELATING TO WHETHER THE EXISTING HONDA DEALERS**
20 **IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE COMPETITION**
21 **AND CONVENIENT CONSUMER CARE FOR HONDA MOTOR VEHICLES, INCLUDING**
22 **ADEQUATE MOTOR VEHICLE SALES AND SERVICE FACILITIES, EQUIPMENT,**
23 **SUPPLY OF VEHICLE PARTS, AND QUALIFIED SERVICE PERSONNEL**
24 **[Section 3063(d)]**

25 **Tipton Honda**

26 120. Tipton Honda underwent remodeling efforts to bring its
27 facility into compliance with the Honda image program. The remodel
28 plan contemplated future growth and expansion.

121. Tipton Honda's service facility, with 26 service stalls,
including 22 lifts, exceeds AHM's requirements. The service facility

1 processes around 2,000 repair orders monthly but has the capacity for
2 twice as much work. Its service center is open six days a week, and
3 its sales department seven days a week. Tipton Honda exceeds AHM's
4 requirements for showroom size, storage size, parts department
5 inventory, and flooring requirements.

6 122. QDS scores are AHM's measure of customer satisfaction in
7 sales. TSI scores are AHM's measure of customer satisfaction in
8 service. Tipton Honda's year-end QDS and TSI scores met or exceeded
9 district and zone averages over the past four years.

10 123. In 2000 AHM established its EXCELL program, an acronym which
11 stands for Exceeding Customer's Expectations for Life. This is a
12 voluntary program which is used to monitor and improve customer
13 satisfaction. Tipton Honda has an employee for the EXCELL program
14 whose responsibility is to track the program. Tipton Honda has
15 received EXCELL certification from AHM since it joined the program.

16 124. Tipton Honda is ranked 179 nationwide among 1,014 Honda
17 dealers.

18 Ball Honda

19 125. The new Ball Honda facility has 30 service stalls including
20 20 lifts, and employs 14 Honda technicians. The service facility
21 exceeds AHM's guidelines. The service facility is open daily. Ball
22 Honda has a separate body shop with 18 stalls and three paint booths.
23 The facility also has two quick lube stalls.

24 126. Ball Honda's year-end QDS scores from 2000 through 2004, met
25 or exceeded district and zone averages, except for the year 2000 when
26 it fell below both district and zone. For the same period Ball
27 Honda's TSI scores, met or exceeded district and zone averages, except
28 for 2002 when it fell below district and zone.

1 127. Ball Honda has received Honda's EXCELL certification for the
2 past two years. Mr. Ball's daughter Jennifer is the EXCELL manager.

3 128. Ball Honda is ranked 312 nationally among Honda's 1,014
4 dealers.

5 **Cush Honda**

6 129. Cush Honda has won the prestigious Honda President's Award
7 in the years 1999, 2000, 2002, and 2003. The President's Award
8 recognizes the top 20% of the dealers in the country. Cush Honda also
9 received the Honda Masters Award in 2000 and 2001 for outstanding
10 sales achievements. Cush Honda ranks 94 among all 1,014 Honda dealers
11 nationwide.

12 130. Cush Honda's remodeled facilities include 33 (25 are Honda
13 dedicated) service stalls with 28 of the stalls with lifts. The
14 service department is opened six days a week. Cush Honda employs
15 seven service technicians and 18 sales persons. Cush Honda's
16 remodeled facilities exceed AHM's guidelines for both sales and
17 service facilities.

18 131. The year-end QDS and TSI scores for Cush Honda met or
19 exceeded district and zone averages from 2000 through 2004. Cush Honda
20 had one of the initial pilot programs for the EXCELL program and since
21 then has enjoyed continuous EXCELL certification.

22 **Pacific Honda**

23 132. Pacific Honda has been the number one dealer in San Diego
24 for the past 15 years and ranks 33 nationwide out of 1,014 dealers.
25 Like Cush Honda, Pacific Honda has won both the President's Award and
26 the Masters Award on multiple occasions.

27 133. The service and parts facility includes 28 covered service
28 bays, five service advisor stations, customer lounge, retail and

1 wholesale parts departments and three-bay express lube facility.
2 Across the street there are eight more bays exclusively dedicated to
3 Honda. Nearby there is a three-acre storage facility with a service
4 bay for pre-delivery inspection. Pacific has a total of 40 service
5 stalls and lifts, and 36 service technicians. The service department
6 is open seven days a week. Pacific Honda has 30 new-car sales
7 persons, ten used-car sales personnel and four people employed in
8 finance.

9 134. The year-end QDS and TSI scores for Pacific Honda met or
10 exceeded district and zone averages for most of the past four years.

11 135. Pacific Honda, like the other dealers, is EXCELL certified.

12 OTHER FACTS PERTAINING TO PROTESTANTS

13 136. Cush Honda, Pacific Honda and Tipton Honda exceed Honda's
14 land and building requirements. The service capacity of Tipton Honda
15 and Cush Honda each exceed Honda requirements, and both dealerships
16 are capable of expanding their service hours to handle additional
17 Honda business.

18 137. The monthly parts supply per dealership between 2003 through
19 March 2005 are as follows: Ball Honda and Cush Honda are comparable
20 to group and district average; Pacific Honda was comparable in 2003
21 and exceeded group and district average in 2004 through March 2005;
22 and, Tipton Honda exceeded both group and district average for the
23 entire time period.

24 138. Notwithstanding the fact that the dealers provide more than
25 adequate service facilities, equipment, parts inventory and qualified
26 service personnel, the Lemon Grove RMA has not been adequately served
27 in terms of Honda new vehicle sales, nor have the protesting dealers
28 provided adequate competition or convenient customer care, as set

1 forth in Section (b) which is incorporated by reference herein.

2 e) FINDINGS OF FACT RELATING TO WHETHER THE
3 ESTABLISHMENT OF AN ADDITIONAL DEALERSHIP WILL INCREASE
4 COMPETITION AND THEREFORE BE IN THE PUBLIC INTEREST
5 [Section 3063(e)]

6 139. Mr. Anderson gave the opinion that increasing the size of
7 the dealer network would promote intrabrand competition which would in
8 turn promote interbrand competition.

9 140. The intrabrand and interbrand competition will benefit
10 consumers in the Lemon Grove RMA, South County and San Diego metro as
11 consumers will be able to shop in a more competitive environment.

12 141. Competition created by adding another Honda dealer will
13 further enhance customer convenience by giving consumers closer access
14 to Honda dealers. The distance for consumers to travel to their
15 nearest Honda dealer would be reduced from the current 4 miles to 2.9
16 miles.

17 142. Mr. Anderson stated that one of the ways existing dealers
18 could positively respond to the increased competition would be to
19 price their vehicles more competitively, which if they chose to do so
20 would benefit the consuming public.

21 143. Based on their past relationship with DCH, AHM expects that
22 DCH will be a strong competitor in the marketplace. DCH owns 33
23 dealerships throughout the United States, with twelve stores of
24 various line-makes in California. DCH owns multiple Honda and Acura
25 dealerships on both the East and West coasts.

26 144. The proposed Lemon Grove general manager, Gary Sorter, is a
27 strong candidate with many years of experience in retail auto sales in
28 the San Diego area. Mr. Sorter has started two dealerships including
a Hyundai store which he owned. Mr. Sorter was the general manager of

1 Pacific Honda for 13 years and helped that dealership become the
2 largest volume dealer in San Diego.

3 145. Protestants complain that DCH offers cars for sale below
4 invoice. However, Mr. Chang, Sr. Vice President and Regional Manager
5 of DCH, denied the allegation stating that DCH does offer sales at
6 invoice but does not sell below invoice as Honda's Dealer Marketing
7 Allowance Policy penalizes dealers at 1% of invoice for selling below
8 invoice.

9 f) FINDINGS OF FACTS RELATING TO EXISTING CIRCUMSTANCES

10 146. Protestants contend that the proposed Lemon Grove site is in
11 a blighted neighborhood which is too poor to support a dealership.
12 Upon a site visit the trier of fact observed an industrial site with
13 aged and decaying buildings. The yard of one of the residents is
14 overgrown with vegetation and strewn with abandoned vehicles. Another
15 tenant, a feed store, had a small array of caged farm animals on the
16 property.

17 147. It is apparent from the testimony of the Lemon Grove City
18 Manager that they are making every effort to improve the city and to
19 remove blight. It is equally apparent that the City of Lemon Grove
20 views the establishment of the new dealership as a step towards this
21 goal with the anticipation that the new dealership will act as a
22 catalyst for further growth and development in the area.

23 148. Citing Longo Toyota in El Monte which sells 20,000 cars
24 annually, AHM has shown that dealers in communities that are perceived
25 as poor can be successful.

26 149. Protestants contend that the location of the proposed site
27 generates safety issues because of its proximity to trolley tracks and
28 its single driveway for entrance and exit.

1 150. DCH plans to install a sidewalk along the tracks which will
2 lead to the service area. Mr. Sorter believes that access to the
3 trolley will improve customer access to the dealership.

4 151. The Lemon Grove site is located near the off-ramp to the 94
5 Freeway. The land is very close to the freeway with only one
6 entrance. Traffic exiting the freeway can cause gridlock for
7 customers entering or exiting the dealership.

8 152. Upon visiting the Lemon Grove site, the trier of fact found
9 the off-ramp and entrance to the property extremely difficult to
10 negotiate. The off-ramp is relatively short and requires the driver
11 to maneuver quickly through traffic into the far left lane to turn
12 onto the property.

13 153. DCH has preliminarily addressed this problem by hiring
14 traffic engineers who will work with Caltrans and the City of Lemon
15 Grove on the issue of ingress and egress. The plans will include
16 creating a three-lane off-ramp off the 94 Freeway with a median strip
17 and specific turn lanes into the dealership.

18 154. A more serious contention raised by Protestants is whether
19 or not Gary Sorter obtained special treatment from AHM's management
20 resulting in the award of the Lemon Grove point.

21 155. In 2000 AHM conducted a market study identifying Vista as an
22 open point. No candidate has ever been selected for this point and
23 Protestants contend that AHM changed its focus from Vista to Lemon
24 Grove because AHM wanted to award Mr. Sorter the Lemon Grove point.

25 156. AHM representative, Mr. Lynch testified that AHM deferred
26 action on the Vista open point to give the two North County dealers an
27 opportunity to remedy facility deficiencies which both of them did. In
28 2000 AHM recommended that Cush Honda-Escondido separate its dualled

1 facilities and build an exclusive Honda showroom which it did. AHM
2 recommended that Hoehn Honda move to the Carlsbad Auto Center which it
3 did.

4 157. Protestants argue that they too should have the same
5 opportunity of improvement as the North County dealers had. However,
6 the two situations are entirely different. The North County dealers
7 required facility upgrades, but this is not the case with Protestants.
8 For the reasons set forth in Section (b) of this decision, facility
9 upgrades alone will not cure the inadequate representation of Honda in
10 the Lemon Grove RMA or South County.

11 158. Protestants contend that AHM abandoned its 2000 Market Study
12 for an open point in Vista in favor of creating an add point in Lemon
13 Grove through its June 2004 Market Study. While the decision to
14 conduct the June 2004 Market Study may have been influenced by the
15 opportunity of available land in Lemon Grove, which was made known to
16 AHM in September 2003 by Gary Sorter⁹, the final decision to create
17 the Lemon Grove add point rested on market studies showing Honda's
18 inadequate representation in South County. It should be noted that
19 AHM has not established a new Honda dealership in San Diego in 15
20 years. The Market Study found the lost opportunity in South County is
21 2,886 as opposed to the loss in North County of 1,551. Additionally
22 Honda's competitors like Toyota are evenly matched one for one in
23 North County, but Honda is outnumbered by the same competitor in South
24 County.

25 159. After discovering the property in Lemon Grove, Mr. Sorter
26 approached other dealers with the prospect of jointly submitting an

27
28 ⁹ The parties offered conflicting testimony as to the timing of the decision by AHM
to conduct the 2004 Market study.

1 application for the Lemon Grove point. Mr. Meyer of Pacific Honda,
2 testified that Mr. Sorter stated that if he (Mr. Sorter) was involved
3 in the application it would be "unbeatable." Mr. Meyer also testified
4 that Mr. Sorter had represented to another Sunroad executive that "he
5 had the deal in his back pocket." Richard Vann of Sunroad also
6 testified that Mr. Sorter said of the Lemon Grove point "it was his
7 deal to have."

8 160. Although the statements attributed to Mr. Sorter are
9 credible, at worst, it represents puffing and was most likely an
10 exaggeration and embellishment of his role in identifying the Lemon
11 Grove site. The statements of Mr. Sorter, with no other evidence, do
12 not support the claim that DCH and Mr. Sorter were awarded the Lemon
13 Grove point out of favoritism, or that the decision of AHM to
14 establish the dealership in Lemon Grove was motivated by a desire to
15 provide a franchise for Mr. Sorter, rather than for sound business
16 reasons.

17 161. According to AHM's representative Mr. Lynch, 18 applications
18 were submitted by prospective candidates for the Lemon Grove point.
19 AHM management interviewed eight applicants. The four finalists were
20 rated in ten categories which included: overall reputation and proven
21 success, access to local management, capitalization, ability to raise
22 capital, past customer satisfaction ratings, the proposed general
23 manager, the proposed facility and site and their compatibility with
24 Honda's philosophy.

25 162. DCH and Mr. Aaron Feldman, owner of Protestant Pacific Honda
26 were the two finalists. DCH was ultimately chosen for the following
27 reasons. In AHM's past relationship DCH has been very supportive of
28 AHM's initiatives including the Honda image program, and the EXCELL

1 program. DCH has multiple Honda and Acura stores on both the East and
2 West coasts. DCH is experienced in racially diverse markets. DCH and
3 Aaron Feldman qualify as minority-owned businesses which satisfy a
4 goal of Honda's to expand its minority ownership. DCH had previously
5 negotiated the purchase of multiple dealers in Temecula. DCH's
6 proposed general manager, Gary Sorter, is well qualified and known to
7 Honda for running the most successful store in San Diego for 13 years.
8 DCH was able to secure the Lemon Grove property contingent upon AHM's
9 approval, and DCH~~4~~ had the ability to finance the project. DCH
10 embraces one of AHM's core principles of respect for the individual.
11 DCH exhibited passion in pursuing the project.

12 163. The selection of DCH to be the Lemon Grove dealer was done
13 through a fair and thorough process. Protestants have failed to offer
14 credible evidence to support their contention the DCH and Mr. Sorter
15 received special treatment in the selection process from AHM.

16 DETERMINATION OF ISSUES

17 164. Protestants have failed to prove that there is good cause
18 not to permit the establishment of the proposed Honda dealership in
19 the Lemon Grove relevant market area at Costa Bella and Lemon Avenue,
20 Lemon Grove, California.

21 A. Protestants have established that their investments are
22 permanent, but have failed to establish that their investments would
23 be adversely affected by the establishment of the Lemon Grove
24 dealership. [Section 3063(a)];

25 B. Protestants have failed to meet their burden of proof that
26 the establishment would have an adverse effect on the retail motor
27 vehicle business and the consuming public in the relevant market area.
28 The establishment of the proposed additional new dealership in the

1 Lemon Grove relevant market area would benefit the retail motor
2 vehicle business by increasing intrabrand and interbrand competition.
3 The consuming public will benefit from the increased competition. The
4 proposed additional dealership would increase customer convenience.
5 [Section 3063(b)]

6 C. Protestants failed to prove that the establishment of an
7 additional dealer would be injurious to the public welfare. [Section
8 3063(c)]

9 D. Protestants failed to establish that there is adequate
10 competition and convenient consumer care in terms of sales.
11 Protestants have established that their service facilities, equipment,
12 supply of vehicle parts, and qualified personnel are adequate and
13 exceed the guidelines set forth by AHM. [Section 3063(d)]

14 E. Protestants failed to meet their burden of proof that the
15 establishment of an additional dealer would not increase competition,
16 and therefore would not be in the public interest. [Section 3063(e)]

17 F. Protestants failed to prove that AHM's award of the add
18 point was based on anything other than a fair selection process.
19 [Section 3063(f)]

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PROPOSED DECISION

The Protests are overruled. Respondent American Honda Motor Co., Inc. shall be permitted to establish an additional Honda dealership at the proposed site at Costa Bella and Lemon Grove Avenue, Lemon Grove, California.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as the result of a hearing before me, and I recommend this proposed decision be adopted as the decision of the New Motor Vehicle Board.

DATED: January 23, 2006

Merilyn Wong

By:

MERILYN WONG
Administrative Law Judge

Ken Miyao, Acting Director, DMV
Mary Garcia, Branch Chief,
Occupational Licensing, DMV